

# Exhibit C

1 HIGHLY CONFIDENTIAL - R. AZERAD

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----x

11 REVISED

12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF ROBERT AZERAD

14 New York, New York

15 August 17, 2009

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24041

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MR. LAYDEN: David Layden with Jenner  
& Block for the Examiner.

BY MR. TAMBE:

**Q. Mr. Azerad, by whom are you employed currently?**

A. Barclays Capital.

**Q. And how long have you been employed by Barclays Capital?**

A. Since September of 2008.

**Q. In what position are you employed by Barclays?**

A. I am a director in the Treasury  
Department of Barclays Capital.

**Q. Based here in New York?**

A. Based here in New York.

**Q. And since you began working for Barclays in September of 2008, has your title or position changed?**

A. No.

**Q. If you could briefly describe for us what your duties are as a director in the Treasury Department.**

A. I am in charge of the Liquidity  
Management Team for New York.

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**Q. And if you could just briefly describe the organization of that team. Who reports to you? Who do you report to?**

A. I report to Steve Sell, S-E-L-L, who is the U.S. Treasurer, and under me, I have two direct reports, Yaseen Akhtar, which I'm going to spell for you -- y-A-S-E-E-N, and then the last name is spelled A-K-H-T-A-R -- and Scott Alvey, A-L-V-E-Y.

Scott doesn't have anyone under him. Yaseen has a team of about, I guess about six or seven people reporting under him.

**Q. If you could just briefly describe what it means to be the director of the Treasury Department responsible for liquidity management in New York. What do you mean by that?**

A. Primarily liquidity reporting and a little bit of liquidity management. That's essentially what kind of Yaseen and I and Yaseen's teams are doing. Scott Alvey is in charge of the Barclays Bank Delaware brokerage CD program.

**Q. When did you first receive an offer of employment by Barclays?**

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A. I believe it was at the same time as most other U.S. employees of Lehman Brothers, which I believe was the weekend of September 18 or 19th. I don't have a calendar in front of me, but whatever was the Sunday or Monday.

**Q. So roughly the end of the week in which Lehman Brothers declared bankruptcy?**

A. That is correct, yes.

MR. STERN: Jay, if you don't mind, I have a monthly calendar for September, which may help the witness.

MR. TAMBE: Great. Thank you.

MR. STERN: Just if I could keep it in front of Mr. Azerad for reference.

**Q. If you take a look at September 15, do you remember that --**

A. That would have been September 21, which would have been a Sunday, I believe.

**Q. So you believe it was September 21 that you received an offer of employment from Barclays; is that right?**

A. To the best of my recollection. I was -- I received an e-mail, which I had to reply yes or no, depending on whether I was

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willing to accept an offer from Barclays, and I believe it was at the same time as most other U.S. employees of Lehman Brothers.

**Q. Okay. And the e-mail that you recall receiving on September 21, did that contain an offer of employment?**

A. I don't exactly remember how the wording of the e-mail was, was structured, but I took it to be an offer of employment.

**Q. Let me ask the question a little differently. There was an e-mail. Was there an attachment, an employment agreement or a contract?**

A. There was nothing. It was just the text of the e-mail, I don't remember seeing any attachment, and then I had to respond to it.

**Q. Okay. And you responded to it, right?**

A. I responded to it.

**Q. On Monday, the 22nd, you responded, correct?**

A. I don't remember when precisely. It may have been on Sunday. It may have been on Monday.

**Q. Do you recall the terms of your offer**

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2 **of employment being spelled out in this Sunday,**  
3 **September 21, e-mail?**

4 A. No, I don't recall currently if the  
5 terms were contained in that e-mail.

6 Q. I'm just going to show you -- just  
7 mark this as 174.

8 (Exhibit 174, an e-mail from R. Azerad  
9 dated 9/22/08, marked for identification, as  
10 of this date.)

11 Q. I have had placed before you a  
12 document marked as 174. Would you take a look  
13 at that. Let me know when you're done with it.

14 A. Uh-huh. Okay.

15 Q. That's the e-mail where you accepted  
16 the offer of employment, right?

17 A. That is correct.

18 Q. We have not had produced to us the  
19 e-mail you described, which was the e-mail to  
20 you --

21 A. Uh-huh.

22 Q. -- around Sunday, the 21st, describing  
23 this offer of employment. Have you seen that  
24 offer recently?

25 A. No, I have not.

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2 MR. TAMBE: We would ask counsel to  
3 produce a copy of that e-mail and any  
4 attachments to that e-mail.

5 MR. STERN: I'm surprised you don't  
6 have it. But I'll double-check.

7 MR. TAMBE: And maybe it's in the  
8 various documents that have come over, but  
9 we have not detected it.

10 MR. STERN: We'll double-check for  
11 sure.

12 Q. Do you recall ever signing a written  
13 employment agreement with Barclays?

14 A. No, I don't.

15 Q. And when you joined Barclays in  
16 September of 2008, what was your understanding  
17 of what your compensation would be?

18 A. I had no understanding per se, meaning  
19 that my -- let me -- if you don't mind, let me  
20 step back.

21 My understanding at that time was that  
22 my salary was going to remain the same as at  
23 Lehman Brothers and bonuses was going to be  
24 variable as it has been at Lehman Brothers.

25 Q. And that was your understanding when

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2 **you sent this e-mail, Exhibit 174?**

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes, that's correct.

6 Q. And through whom, from whom did you  
7 get that understanding?

8 A. I don't remember at that time. The  
9 way I would -- it was like, the way I would  
10 describe it, was kind of my intuitive  
11 understanding at that time that this would be  
12 the way -- the way it would play out.

13 Q. Fair enough. And was that your  
14 understanding even before you received the  
15 Sunday e-mail which offered the employment?

16 A. I don't recall.

17 Q. Did you have a general sense in the  
18 days leading up to that weekend that in some way  
19 Barclays was going to offer employment to Lehman  
20 employees, take care of your salary and bonuses?

21 A. It was my understanding at that time  
22 that a large number of Lehman employees would be  
23 transitioning to Barclays.

24 Q. Including several people that you were  
25 working with, right?

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2 A. Including several people that I would  
3 be working with, yes.

4 Q. And prior to your move to Barclays,  
5 your direct report was to Mr. Tonucci; is that  
6 right?

7 A. That's correct.

8 Q. He was your immediate boss, right?

9 A. He was my immediate boss.

10 Q. And you understood that Mr. Tonucci  
11 would be going over to Barclays as well,  
12 correct?

13 A. That was my understanding at that  
14 time. I don't recall having any discussion with  
15 Mr. Tonucci about it.

16 Q. Prior to joining Barclays, what was  
17 your position at Lehman?

18 A. Prior to joining Barclays, I was the  
19 Global Head of Assets and Liabilities Management  
20 at Lehman Brothers.

21 Q. And for how long had you held that  
22 position at Lehman?

23 A. I became the acting head in March of  
24 2008. I don't recall when I was made the  
25 official head.

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Q. Is it fair to say from your answer that since March of 2008 you were functioning as the Asset and Liability -- Global head of asset and Liability Management at Lehman?

A. Yes.

Q. And prior to March 2008, what was your position at Lehman?

A. I was the Head of Global Financial Management Reporting.

Q. And how long had you held that position?

A. I believe since 2006.

Q. And when did you start at Lehman?

A. In January of 2000.

Q. In your role as Global Head of Asset and Liability Management at Lehman, did you -- withdraw that. As Global Head of Asset and Liability Management at Lehman, just describe briefly what your day-to-day duties were.

A. I had a large number of people reporting to me that could be classified in kind of three groups: Liquidity reporting, liquidity management, and also had the Treasury Funding Desk reporting to me.

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The Treasury Funding Desk had two or three primary responsibilities, which was the unsecured debt, the unsecured debt issuance, the management of the liquidity pool and, in conjunction with cash and collateral management, the intercompany funding of Lehman.

Q. So let's drill down on these different parts of your work. Let's start with liquidity reporting.

While you were at Lehman, what sorts of things are captured under liquidity reporting? What is liquidity reporting?

A. Liquidity reporting is essentially measuring the liquidity metrics that informs Lehman of its liquidity position.

Q. When you say "liquidity position," it's just how much cash Lehman has available or can raise; is that roughly what that is?

A. That's one of the metrics, but that's not the -- the cash position or the liquidity pool is one of the metrics.

Q. So cash is one of the metrics. Is borrowing capacity another of the metrics?

A. No, it's not.

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Q. Okay. So what are the other metrics?

A. The other metrics was the detailed analysis of our secured funding, detailed reporting of our unsecured debt, a reporting of our contingent liquidity risk.

Q. Anything else?

A. And, yes, the measure of our cash capital position.

Cash capital is an industry concept which measure liabilities with life, remaining life greater than one year.

MR. STERN: Excuse me. One of your previous answers referred to detailed analysis of unsecured funding. You said unsecured or secured?

THE WITNESS: It was both.

Q. Just recapping this liquidity metrics, you've got cash, detailed analysis of secured funding, reporting of unsecured debt; is that right?

A. Unsecured, yes.

Q. Reporting of contingent liquidity risks?

A. Uh-huh.

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Q. Right? Measuring of the cash capital position?

A. That is correct.

Q. And a measurement or reporting of the liabilities with lives greater than one year?

A. No, that's just the definition of "cash capital."

Q. And when you referred to analysis of secured funding, would that include repo funding?

A. That's correct.

Q. So, again, going back to your day-to-day responsibilities, under liquidity reporting you are receiving detailed information about all of these different liquidity metrics, correct?

A. That's correct.

Q. Another part of your job is not just to get -- was not just to get the liquidity reports, but then to manage the liquidity of the firm, correct?

A. It was to set the parameters, the policy. In Lehman parlance, the funding framework.

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**Q. Can you describe for us what it means to set the funding framework?**

A. These are essentially rules which a summary of which can be found in our annual report and 10-K and 10-Q filing explaining how we intend to fund Lehman.

**Q. And in addition to yourself, were there other individuals at Lehman who were responsible for setting the funding framework?**

A. Yes. I mean, obviously the funding framework had to be agreed upon by the Finance Committee of Lehman. The CFO, the Global Treasurer and other people were members of the Finance Committee.

**Q. Going back to your listing of duties --**

A. If I may just add one thing. My role was essentially to make proposals, but the Finance Committee was a governance body. That was where the decisions were ultimately being made.

**Q. And just so I understand your clarification, this is with respect to the funding framework; is that right?**

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A. That's correct.

**Q. You would make a proposal and the Finance Committee would make the decision?**

A. Uh-huh.

**Q. Is that right?**

A. That's correct.

**Q. Going back to your day-to-day responsibilities at Lehman, you referenced the Treasury Funding Desk and I believe information or actions concerning the Treasury Funding Desk, and one of those had to do with unsecured debt issuance?**

A. Uh-huh.

**Q. Yes?**

A. I'm sorry.

**Q. You just have to say yes or no so she could record it.**

**Describe that function a little further. What does that entail?**

A. The Treasury Funding Desk, upon instruction generally from the treasurer and all the CFO, was then liaising with either the Commercial Paper Desk, which is part of the Fixed Income Division of Lehman, or with the

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Syndicate Desk, which is also part of the Fixed Income Division, to issue short-term or long-term debt. It would then also liaise with the Derivative Desk to swap the debt -- to swap the debt if we deem it -- if it was deemed to be an appropriate decision.

**Q. So, again, just to put this in context in terms of managing the liquidity of Lehman, this is providing liquidity to Lehman either through short-term commercial paper or long-term borrowing, correct?**

A. That is correct.

**Q. There were three aspects under the Treasury Funding Desk that you described. Another one was the management of the liquidity pool. Would you describe what you meant by that?**

A. Yes, Lehman Brothers Holding had a liquidity pool, and the function of the funding desk, again, was to manage on a day-to-day basis the liquidity pool, meaning in which instrument the liquidity pool was going to be invested.

**Q. And the last component of the Treasury Funding Desk had to do with intercompany funding**

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**of Lehman?**

A. Uh-huh.

**Q. Can you describe what you meant by that?**

A. Lehman had many legal, many different legal entities. The way that most of the unsecured debt in the U.S. was raised through Lehman Brothers Holdings, Inc. and so to the extent that some subsidiaries were in need of unsecured funding when there would be an unsecured loan from Holdings to these different legal entities.

**Q. I should have picked this up earlier. Were you employed both by Lehman Brothers, Inc. and Lehman Brothers Holdings, Inc.?**

A. No, I believe -- I believe I recall, I'm not a hundred percent sure, I was an employee of Holdings.

**Q. Focusing on the secured funding aspect of your work, that was done through repos, correct?**

A. That was a primary form of secured funding.

**Q. What other form of secured funding did**

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2 **you have at Lehman?**

3 A. There was repo and there were also  
4 stock loan. There were also some asset-backed  
5 debt being issued as well.

6 **Q. So, focusing in on the repo part of**  
7 **it, could you describe for me what your duties**  
8 **were with respect to repo agreements that Lehman**  
9 **entered into as part of its liquidity**  
10 **management?**

11 A. The secured funding was placed under  
12 the responsibility of the Prime Services  
13 division. My role within Treasury was to  
14 analyze the secured funding book by counterparty  
15 and by asset class and by legal entity,  
16 obviously.

17 **Q. For what purpose were you analyzing**  
18 **the secured funding book?**

19 A. It's one of the -- secured funding  
20 was, on a percentage basis, the primary source  
21 of funding for Lehman Brothers.

22 **Q. And as we get closer to September 15,**  
23 **was it the case that other funding sources for**  
24 **Lehman Brothers were less and less accessible to**  
25 **Lehman Brothers?**

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2 A. Yes.

3 **Q. For example, the CP Desk, the CP**  
4 **funding function, was that available to Lehman**  
5 **in the early weeks of September 2008?**

6 A. We may have done one or two CP trades  
7 at the beginning of the week, but it's probably  
8 fair to say that, by the end of the week, we had  
9 lost our ability to issue CP.

10 **Q. And the week you're referring to? You**  
11 **have a calendar there.**

12 A. This is the week starting September 8.

13 **Q. So, by the end of the week of**  
14 **September 8, you had lost that ability?**

15 A. To the best of my knowledge.

16 **Q. Okay. How about long-term --**  
17 **issuances of long-term debt, what was the**  
18 **capacity for Lehman to do that in the first few**  
19 **weeks of September?**

20 A. I don't know. It was -- it was our  
21 policy at Lehman not to issue long-term debt  
22 between the end of the quarter and our earnings  
23 release, which I think came on September 9th or  
24 September 10th. So we never tried to issue  
25 long-term debt in the first few weeks of -- in

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2 the first week and a half in September.

3 **Q. But how about leading up to that,**  
4 **let's go back to August then, what was the**  
5 **prospect like for Lehman issuing long-term debt**  
6 **in August?**

7 A. I don't remember exactly, but  
8 discussions that were held with the Syndicate  
9 Desk, which -- but they were clearly not as  
10 favorable as earlier in the year.

11 **Q. In the days, immediate days leading up**  
12 **to the 15th, so the 11th, the 12th of September**  
13 **of that weekend, would you describe for us what**  
14 **the liquidity position of Lehman Brothers was**  
15 **during those days?**

16 A. I don't recall the exact numbers. I  
17 have a vague understanding -- I have a vague  
18 remembrance it was probably -- started the week  
19 somewhere in the \$30 billion, that's for  
20 holding, Inc., and we probably ended the week  
21 around September 12th -- it's hard to tell. I  
22 don't recall exactly what -- how we ended  
23 September -- how we ended the liquidity pool on  
24 September 12, but we did lose liquidity during  
25 that week.

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2 **Q. Now, when Lehman did secured financing**  
3 **through or secured borrowing through a repo**  
4 **facility, it had to post as collateral**  
5 **securities, correct?**

6 A. That is correct.

7 **Q. And those securities had a market**  
8 **value, correct?**

9 A. That is correct.

10 **Q. Who within Lehman determined the**  
11 **market value of securities that were posted as**  
12 **collateral for a repo agreement?**

13 A. It was a tri-party repo agreement,  
14 which was the primary form for a repo  
15 transaction. Then our tri-party custodian,  
16 JPMorgan Chase, was valuing the securities.

17 **Q. And Lehman's ability to borrow against**  
18 **that value of securities would be subject to**  
19 **haircuts that were placed by the lender; is that**  
20 **correct?**

21 A. That is correct.

22 **Q. So JPMorgan decides, determines what**  
23 **the value is, correct?**

24 A. The market value.

25 **Q. The market value. And then Lehman's**

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2 **ability to borrow dollars against that value is**  
3 **discounted by a haircut, correct?**

4 A. That is correct.

5 **Q. And were the haircuts negotiated with**  
6 **your lender individually?**

7 A. Generally, yes. I was not part of the  
8 discussion, but that is my understanding.

9 **Q. And they would be set out in a**  
10 **schedule to the relevant repo agreements,**  
11 **correct?**

12 A. That is correct, typically referred to  
13 as Schedule A.

14 **Q. Okay. Who within Lehman would have**  
15 **negotiated those haircuts with repo lenders in**  
16 **that time period, which is the first two weeks**  
17 **of September?**

18 A. It would have been the sales force,  
19 which would have been part of the front office  
20 sales force, Prime Service, perhaps Fixed  
21 Income, perhaps Equities.

22 **Q. Can you think of any particular names**  
23 **of people who would have led that effort at**  
24 **Lehman?**

25 A. I don't have specific names. There  
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2 **were people like Bill Lista, who I know had been**  
3 **involved in the past in repo negotiation.**

4 **Whether he was involved that particular week I**  
5 **don't recall.**

6 **Q. Would you provide the front office**  
7 **people with parameters for negotiating these**  
8 **schedules?**

9 A. No.

10 **Q. The deals that they struck with**  
11 **lenders on the Schedule A, the haircut schedule,**  
12 **would affect the ability of Lehman to borrow,**  
13 **correct?**

14 A. It would affect the amount of cash we  
15 could raise against our securities.

16 **Q. Because, as the haircuts increased,**  
17 **your borrowing ability against the same base of**  
18 **assets would decrease, correct?**

19 A. That is correct.

20 **Q. So were you involved in directing or**  
21 **working with the front office team in**  
22 **determining the haircuts?**

23 A. I don't recall.

24 **Q. How about market valuation, did you**  
25 **get involved in the process of reviewing the**

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2 **values set by your tri-party provider, JPMorgan?**

3 A. No, I was not.

4 **Q. Were you aware of any significant**  
5 **discrepancies between JPMorgan's valuation of**  
6 **securities and Lehman's own internal marks of**  
7 **those securities?**

8 A. Not specifically related to September  
9 8, but relating to my time at Lehman Brothers in  
10 Treasury, I am aware that from time to time  
11 there have been discrepancies between our market  
12 values and JPMorgan market values. And again,  
13 not specifically related to September 8, but  
14 related to my time at Lehman Brothers, I am  
15 aware that there had been working groups between  
16 Lehman and JPMorgan to try to understand the  
17 differences.

18 **Q. Let's roll over into the week of**  
19 **September 15. What I would like to do for the**  
20 **next little while is now walk through and find**  
21 **out from you what you were doing, where you were**  
22 **during that week, and let's take it almost day**  
23 **by day.**

24 **So let's start with September 15. You**  
25 **recall September 15, right?**

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2 A. I -- well, I have -- let me kind of  
3 make a general statement. In the week preceding  
4 September 15, I think the month preceding  
5 September 15, Lehman had -- my team in Treasury,  
6 including myself, including Paolo Tonucci, had  
7 been working very long hours trying to satisfy  
8 various requests for information from the rating  
9 agencies, from different regulators, from our  
10 own internal management, and that probably  
11 was -- that workload increased at the beginning  
12 of September 8, just among many other things,  
13 because it was the end of our quarter, August  
14 31, so we had to prepare our earnings release.

15 The week of September 15 is almost a  
16 year -- it's almost a year ago, and I have some  
17 recollection, not detailed recollection, now of  
18 what happened that week.

19 **Q. Okay. Fair enough. So what I'd like**  
20 **to do for the next little while is get your**  
21 **recollection of what you were doing that week**  
22 **and certain events that week, and later on this**  
23 **morning, we'll go back and look at some**  
24 **documents that might help you remember other**  
25 **aspects of that week. Fair?**

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A. Yes.

**Q. So let's go back to September 15. You remember September 15, generally, right?**

A. I remember -- what I remember from September 15 is me walking into the office and having to tell my team that Lehman Brothers had filed for bankruptcy. I think it must have been on the morning of September 15th, but I learned about the decision I think late on Sunday, September 14.

**Q. That weekend leading into September 15, where were you?**

A. That weekend I was -- I was working in the office, either in my own office, which is at 1301 Sixth Avenue, which is where Treasury was located, and I was also at 745 Seventh Avenue.

**Q. And what were you doing that weekend in the office?**

A. I was helping Paolo Tonucci as best as I could. We had several requests for information and we were also trying to finalize our liquidity metrics for September 12.

**Q. The requests for information that you had, were those from prospective buyers of**

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**Lehman Brothers?**

A. I don't recall precisely. They may have been. There were also requests from the Federal Reserve as well.

**Q. Were you aware of indications of interest to purchase Lehman in the days leading up to 15th?**

A. Yes, I was.

**Q. And were you involved at all in providing information to any of those parties that had expressed an interest in Lehman Brothers?**

A. I remember having a meeting with Bank of America in the week ending September 14th. I don't remember which days precisely of the week. I don't remember which days precisely, but it must have been toward the second half of that week, so from the 10th to the 12th. And I was also aware of an interest by Barclays, and I may, although I don't recall precisely, I may have provided information to Barclays.

**Q. Were you aware of any requests for information from either Barclays or Bank of America the weekend prior to the 15th?**

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A. I don't recall precisely. My recollection is bank of -- I did not receive any information -- any requests for information from Bank of America the Saturday or the Sunday. I may have received, but I don't recall precisely, requests for information from Barclays.

**Q. You described some requests for information from the Fed. Do you recall the nature of those requests?**

A. The Fed was interested in our liquidity metrics.

**Q. And you stated that that weekend, the weekend of the 13th and 14th, some of your time was spent assessing your liquidity metrics for the 12th; is that correct?**

A. That is correct.

**Q. Can you describe further what you mean by that?**

A. There was some uncertainty about where we finished our liquidity from a liquidity standpoint at the end of the 12th. There were large movements of securities and cash between Lehman and the street and also across Lehman entities, and there was a team of people,

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primarily led by Prime Services, which was trying to get a better handle on what happened.

**Q. Now, on or about the 12th of September you learned of some changes in the way the Fed was going to be applying haircuts to the collateral in the Fed facility; is that right?**

A. Not on the 12th. It was on the -- it must have been on the 14th or the 15th.

**Q. Okay. And what was your understanding of the change in the Fed's approach to haircuts in that time period?**

A. What I recall was on the -- either on the 14th or on the 15th, the Fed made an announcement extending liquidity facilities to other broker-dealers, Merrill Lynch, Goldman Sachs, Morgan Stanley, in particular, but did not make the same offer to Lehman Brothers.

So, in particular, because it became a critical funding facility during the week of September 15th, the primary dealer credit facility, which is typically referred to as a PDCF, we -- Lehman was operating under a different schedule, haircut schedule, I believe, than what was offered to other broker-dealers.

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2 **Q. And was the haircut schedule that**  
3 **Lehman was operating under, was that itself**  
4 **changed or altered in any way between the 12th**  
5 **and the 15th?**

6 A. We did not use the PDCF on the 12th.  
7 We started using it on the 15th.

8 **Q. Okay. So on the 15th you described**  
9 **one of the tasks you dealt with on the 15th was**  
10 **telling your team about the filing of the**  
11 **bankruptcy, right?**

12 A. Uh-huh.

13 **Q. Yes?**

14 A. That is correct.

15 **Q. In terms of reviewing and managing**  
16 **Lehman's liquidity on the 15th, what were you**  
17 **doing?**

18 A. We were trying to kind of grapple with  
19 the aftermath of a bankruptcy of Lehman Brothers  
20 Holding. Our liquidity at Lehman was global --  
21 our liquidity reporting was global in nature and  
22 primarily focused on the holding company, and we  
23 had to change our focus starting on the 15th to  
24 now focus on our U.S. broker-dealer, Lehman  
25 Brothers, Inc., which is typically referred to  
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2 somewhat liquid agency securities.

3 On the 15th, we knew that most of the  
4 repo transactions maturing on the 15th were not  
5 going to be rolled, for obvious reasons, and  
6 therefore, the PDCF was going to become the  
7 primary source of funding for LBI.

8 **Q. Did Lehman also amend its existing**  
9 **tri-party funding agreement with Barclays on the**  
10 **15th?**

11 A. I don't recall.

12 **Q. Do you have a general recollection**  
13 **that Lehman began to borrow from Barclays during**  
14 **that week, the week of the 15th?**

15 A. Yes, we entered into a repo  
16 transaction. I don't recall when. It must have  
17 been either on the 15th or the 16th.

18 **Q. Did you play any role in negotiating**  
19 **that repo transaction with Barclays you say**  
20 **either on the 15th or the 16th?**

21 A. I did not play any role in  
22 negotiating.

23 **Q. Did you play any role whatsoever in**  
24 **connection with that repo transaction?**

25 A. To the best of my recollection, my

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2 as LBI.

3 **Q. On the 15th, what were the sources of**  
4 **secured funding that were available to Lehman?**

5 A. By "Lehman," you mean LBI?

6 **Q. I mean LBI.**

7 A. For LBI, we had a few term repo  
8 transactions that were struck before the 15th  
9 and contractually obliged to continue since LBI  
10 was still in operations, and then we had the --  
11 and then we had the PDCF.

12 **Q. If I understand your earlier answer**  
13 **correctly, you said the PDCF became available to**  
14 **Lehman on the 15th?**

15 A. No, it was available prior to the  
16 15th. We did not use it except for a few test  
17 trades when it became available back in I  
18 believe March or April of 2008, but it was  
19 available prior to the 15th.

20 **Q. And other than the PDCF, what other**  
21 **Fed facilities were available to Lehman, to LBI,**  
22 **for funding on the 15th?**

23 A. We were also using the TSLF. I don't  
24 recall precisely how much we were funding  
25 through the TSLF, but it was -- it was primarily  
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2 primary role was just to report on our secured  
3 funding position for LBI. So, because it became  
4 available and because it became a source of  
5 funding, it became part of a reporting.

6 **Q. And do you understand that the nature**  
7 **of the funding provided by Barclays changed as**  
8 **that week went on?**

9 A. My recollection is that the repo  
10 facility grew during that week. How to --  
11 that's probably -- that was -- that essentially  
12 is my -- is my recollection. And then there was  
13 a -- it became very large on the night of the  
14 18th, the Thursday.

15 **Q. And was it your understanding that the**  
16 **Barclays repo facility became very large on the**  
17 **night of Thursday, the 18th, because Barclays**  
18 **was essentially stepping into the shoes of the**  
19 **Fed?**

20 MR. STERN: Objection to the form.

21 A. My understanding is that there was a  
22 transfer of securities, and I use the word  
23 "transfer" in the loosest non-legal term  
24 possible, between LBI and Barclays, and my  
25 understanding is that the repo played a role in

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that transfer.

**Q. Okay. So your understanding is that the repo, the Barclays repo, was the way in which securities were transferred from Lehman to Barclays?**

MR. STERN: Objection to the form.

A. I'm not trying to -- I haven't -- the week of September 15th I have not seen the purchase agreement or the contract between Lehman and Barclays, so I can't tell you how the transfer of securities was going to be done. My understanding is was that if the transaction was successful, the securities being repo'd to Barclays would not come back to Lehman eventually.

**Q. Was there going to be a default on the repo?**

A. Again, I haven't seen the form of the transaction. It was my understanding on the week of September -- on the week of September 15th that if there was no transaction being done, then LBI would not be able to survive as a broker-dealer indefinitely.

So at some point something would have

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happened, a repo transaction would have failed or something else would have happened, depending on when the -- depending on when LBI would have filed for receivership.

**Q. Okay. We'll come back to that. On the 15th did you also learn about a potential transaction between Lehman and Barclays where Barclays would be purchasing the North American operations of LBHI?**

A. To the best of my recollection, I believe I became aware of discussions between Lehman and Barclays post-bankruptcy, because obviously they also took place prior to the bankruptcy on Tuesday.

Again, this is my best of my recollection the -- what happened this week is somewhat. I may not have exact date, but somewhere around the 16th is when I believe that there were ongoing discussions.

**Q. And do you recall how you found out about those discussions on the Tuesday?**

A. It must have been as a side discussion with Paolo Tonucci.

**Q. You told me earlier that you had not**

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**seen the Asset Purchase Agreement; is that right?**

A. The week -- I hadn't seen it the week of September 15th or the week of September 22nd.

**Q. When did you see it?**

A. I became aware of it as part of the work I was -- as part of the litigation work I was doing on behalf of Barclays in 2009.

**Q. What litigation work were you doing on behalf of Barclays in 2009?**

MR. STERN: I'm going to instruct the witness not to answer. That's privileged.

**Q. Are you aware of something called a clarification letter?**

A. I'm not aware of it. I should say at that time, on September 2008, I was not aware of a clarification letter.

**Q. Okay. Have you seen the clarification letter?**

A. To the best of my knowledge, no. Clearly not in September 2008.

**Q. During the week of September 15, 2008, what was your understanding of the overall economics of this transaction between Barclays**

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**and Lehman?**

A. I didn't have an understanding of the economics of a transaction between Lehman and Barclays. I was asked during that two weeks to provide information, which I believe was used as part of a negotiation, but I was not -- I was not kept abreast of the economics of a transaction.

**Q. Just in round terms, do you know what was the value of the assets that Barclays was buying?**

A. Yes, that I was part -- I was part of the team which I believe the weekend of September 20th was helped to establish the opening balance sheet. So, yes, I was aware of a value.

**Q. So, from your involvement in that process of preparing the opening balance sheet, you're aware of the assets that Barclays was purchasing, correct?**

MR. STERN: Objection to the form.

A. I was part of the -- yes, I was. That was also part of my day-to-day responsibilities of tracking secured funding.

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2 **Q. And as part of your involvement in the**  
3 **process of preparing the opening balance sheet,**  
4 **you also became aware of the liabilities that**  
5 **Barclays was assuming?**

6 A. I recall seeing an opening balance  
7 sheet for both assets and liabilities, but my  
8 role on the opening balance sheet was primarily  
9 focused on the asset side, plus obvious -- plus  
10 the associated repo transactions, not other  
11 aspects of the liabilities.

12 **Q. And what's your general recollection**  
13 **of the total value of assets that were**  
14 **transferred from Lehman to Barclays as part of**  
15 **the sale transaction?**

16 A. I don't have a good recollection. I  
17 believe that on Thursday night, the 18th, there  
18 was approximate -- there was approximately  
19 something between 40 and 50 billion dollars of  
20 assets being transferred from -- being repo'd  
21 from Lehman to Barclays, but I was not told what  
22 was the overall size of assets, the ultimate  
23 asset list being purchased from Lehman by  
24 Barclays.

25 **Q. Other than the securities that were**  
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2 transferred Thursday night, the 18th, were you  
3 also aware that there were other securities and  
4 assets identified on the 19th of September for  
5 transfer to Barclays?

6 A. I was working on a schedule, which  
7 turned out to be not a very useful exercise,  
8 trying to identify assets that might be  
9 transferred to Barclays.

10 **Q. I'm sorry, I'm not sure if that**  
11 **answers my question. Were you aware of**  
12 **securities, in addition to securities**  
13 **transferred on Thursday night, that were**  
14 **transferred to Barclays on the 19th?**

15 A. There were -- I was aware that there  
16 were additional securities, I believe, being  
17 transferred. I don't remember whether it was on  
18 the 19th or it was in the subsequent days, but  
19 this was not the only transfer of securities  
20 between Barclays and -- between Lehman and  
21 Barclays.

22 **Q. Putting aside securities, were you**  
23 **also aware of transfers of cash and receivables**  
24 **from Lehman to Barclays?**

25 A. To the best of my knowledge, no. I'm  
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2 aware that Barclays purchased other assets  
3 besides securities, but I don't have the exact  
4 list of assets that Barclays purchased from  
5 Lehman.

6 **Q. What's your best understanding of what**  
7 **assets Barclays purchased other than securities?**

8 A. Well, there were a few things, and  
9 perhaps, by receivables, that's not the way that  
10 I refer to it, so I should probably ask you if  
11 you have specific receivables, but there were a  
12 few things that Barclays purchased.

13 It was -- there was a claim on  
14 securities held -- or, securities or cash held  
15 by Lehman as part of a 15c3-3 lockup which  
16 should have returned to LBI as part of the  
17 unwinding of LBI, or should return to LBI as  
18 part of the unwinding of LBI. That might be  
19 what you refer to by cash and receivables. I  
20 think of it as being part of the 15c3-3 assets.

21 And then there were also the  
22 headquarters of Lehman at 745 Seventh Avenue, I  
23 believe, at least from what I've read in some of  
24 the external communications, that was also  
25 purchased by Barclays.

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2 **Q. To your recollection or understanding,**  
3 **were any assets concerning excess options or**  
4 **derivatives margin that was also transferred by**  
5 **Lehman to Barclays?**

6 A. I remember having discussions on  
7 whether or not this could be transferred to  
8 Barclays. I don't remember whether there  
9 were -- it became part of a final purchase  
10 agreement.

11 **Q. And with whom do you recall having**  
12 **those discussions?**

13 A. I don't recall precisely. I don't  
14 recall precisely.

15 **Q. Sir, I've handed you a one-page**  
16 **document previously marked as Exhibit 136A.**

17 A. Thank you.

18 **Q. Take a moment to review it. Let me**  
19 **know when you're done.**

20 (Document review.)

21 A. I've read the e-mail.

22 **Q. There's a reference in this document**  
23 **to -- the second sentence in the e-mail at the**  
24 **bottom, which is from Mr. Kelly to Ian Lowitt.**  
25 **You are not shown as a copy on any of these**

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e-mails.

Let me read a sentence to you and ask you a question about it: "Final price did not change meaningfully. Approximately a 5B," billion, "all in economic loss versus our marks and 3.6B," billion, "of resi assets left behind."

Do you see that?

A. Yes.

Q. Was it your general understanding that that was the nature of the economics of the deal?

MR. STERN: Objection to the form.

A. I don't understand what Martin Kelly says in this e-mail.

Q. Do you have an understanding independent of this e-mail that roughly the economics of the deal were a \$5 billion loss in economic value against the Lehman marks?

A. To the best of my recollection, no.

Q. To the best of your recollection or understanding, were the economics of the deal such that there was a loss to Lehman and a gain to Barclays as a result of this transaction?

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MR. STERN: Objection to the form.

A. No. My understanding of the transaction is that there was uncertainty both as it refers to the value of a specific asset, but more generally as part of the general market uncertainty. There was a significant increase in volatility that week as a result of, in part, of the bankruptcy of Lehman Brothers, the purchase of Merrill Lynch by Bank of America, and the rescue plan of AIG, and that uncertainty was in part as a result of a transaction transferred from Lehman to Barclays.

Q. Do you have my question in mind? Because I'm not sure you answered my question.

MR. STERN: Objection.

MR. TAMBE: Just read back my question.

(Record read.)

MR. STERN: Objection. He already testified he didn't recall the economics.

A. That's -- I do not -- what I do recall that week was that there was significant uncertainty, asset prices in general, not just on Lehman asset prices, but just asset prices in

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general, and that by acquiring these assets, essentially the uncertainty on the valuation of these assets was transferred from Lehman to Barclays. It may have resulted in a gain or in a loss. That I -- that I don't know. I don't --

Q. Okay. So if there was a gain to Barclays from this transaction, you know nothing about it?

A. When Barclays announced its results at the end of 2008, I believe, and you can look at the press announcement from Barclays, I believe that Barclays announced that it was making -- that the transaction resulted in a gain.

The transaction, again, in a loose sense, I don't remember the exact text, it's public -- it's public information, I believe that Barclays said that it made a gain as a result of the transaction.

Q. And other than what you read in that public announcement, you know nothing else about any gain to Barclays, isn't that right?

A. That is correct. Let me try to be slightly more specific. There is, if I can,

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there is kind of a gain -- and gain, meaning if you're thinking of a -- to crystalize a gain or a loss, whatever was going to be the outcome of the transaction, you have to sell the assets.

The amount of assets being transferred from Lehman to Barclays meant it was, I believe, to the best of my knowledge of someone who has been in an investment bank for now eight or nine years, it would have been difficult for Barclays to liquidate these assets in a very short amount of time.

So there was uncertainty for any parties, Lehman or Barclays, how much these assets would have been sold at if you wanted to crystalize the gain or the loss.

Q. Do you know if there was an attempt made in the transaction to compensate Barclays for this uncertainty?

MR. STERN: Objection to the form.

A. I was not part of the negotiation between Lehman and Barclays. I was helping people who may have been involved in the negotiation when they asked me specific questions. I was not part of the negotiation.

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Q. Were you involved in any revaluation or marking down of Lehman assets at the time they were transferred from Lehman to Barclays?

A. I was not part of the -- this would have been done, if it had been done, by the -- By Product Control Group. Product Control at Lehman was responsible for marking assets.

Q. Are you aware of any markdown of assets by the Product Control Group in connection with the transfer of assets from Lehman to Barclays?

A. To the best of my knowledge, no.

Q. I show you a document marked Exhibit -- previously marked Exhibit 126. Take a moment to look at this one-page document. Let me know when you're done.

(document review.)

A. I've read the e-mail.

Q. You're not shown as a copy on any of these e-mails, but I'll ask you about a couple of phrases that are used.

At the bottom of this e-mail, the e-mail from Gerry Reilly to Ian Lowitt and others, there's a reference to the amount of

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block discount, do you see that?

A. Yes.

Q. Does that phrase have any meaning to you in connection about the Lehman/Barclays transaction?

MR. STERN: Objection to the form.

A. I don't know when Gerry Reilly wrote this e-mail, used the word "block discount," what he meant by it.

Q. Does the phrase "block discounts" have any meaning to you in connection with the repo work that you have done at Lehman?

MR. STERN: Objection to the form.

A. No, I'm not -- no.

Q. Again, at the bottom of that page in that e-mail, there's a reference to "defaulting on repo could be the best, as discount could be taken from a haircut." Do you see that?

A. Yes.

Q. Do you have any recollection or understanding of a discount being provided by Lehman to Barclays via the haircut on the repo?

MR. STERN: Objection to the form.

A. No. Again, I had not seen at that

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time the purchase agreement between Lehman and Barclays. In a repo transaction, I believe, as you mentioned earlier, there is always a haircut, meaning a discount from market value. So the lender would not provide financing against asset dollar for dollar but would apply a haircut. The understanding is if the borrower defaults, then the lender keeps the securities but also keeps the uncertainty about the final disposal -- the value of the securities when he finally disposes of them.

Q. So, using round numbers, if Barclays had provided \$45 billion of financing against \$50 billion of assets, the haircut would be the \$5 billion, correct?

MR. STERN: Objection to the form.

Are you still referencing this exhibit?

MR. TAMBE: No, I'm not. We're having a discussion.

Q. Do you have any question?

A. Yeah, I don't --

MR. STERN: Let's hear the question again.

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(Record read.)

A. In a conceptual way. Again, we are not saying these are the actual numbers. If there is a difference between what is typically referred to as the pledge value versus the market value of a security, then yes, this is how you could define haircut.

Q. Going back to your previous answer, your understanding is if the borrower defaulted, the lender would get to keep the securities, correct?

A. This is what I observed when I was at Lehman when there were a few hedge funds which defaulted earlier in 2008. Lehman had -- Lehman was providing financing and when the hedge fund defaulted, Lehman went and took control of the securities.

Q. When you did review the Asset Purchase Agreement, did you see any reference to defaulting on the repo in the Asset Purchase Agreement?

MR. STERN: Objection. I believe this calls for communications with counsel.

MR. TAMBE: I don't think it does.

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<p>1       HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       <b>Q. You reviewed the APA?</b></p> <p>3       MR. STERN: Did you review --</p> <p>4       A. No, when I reviewed -- I believe that</p> <p>5       Alan Kaplan, who is the -- was Barclays'</p> <p>6       counsel, sent me --</p> <p>7       MR. STERN: Let me just stop you there</p> <p>8       because I don't want you to testify to your</p> <p>9       communications with counsel. I'm just going</p> <p>10      to instruct you not to answer. Let's wait</p> <p>11      for the next question.</p> <p>12      <b>Q. Don't tell me what you said to Alan,</b></p> <p>13      <b>what Alan said to you, but you saw a copy of the</b></p> <p>14      <b>Asset Purchase Agreement, right?</b></p> <p>15      A. Not in September 2008.</p> <p>16      <b>Q. Whenever you saw it. In 2009 you saw</b></p> <p>17      <b>it, correct?</b></p> <p>18      A. If I had seen it, it would have been</p> <p>19      part of the communication I had with Alan</p> <p>20      Kaplan.</p> <p>21      <b>Q. Fine. So put aside your communication</b></p> <p>22      <b>with Mr. Kaplan.</b></p> <p>23      MR. STERN: I don't think he can do</p> <p>24      that, Jay.</p> <p>25      MR. TAMBE: Yes, he can.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       MR. STERN: Jay, in fairness,</p> <p>3       please --</p> <p>4       MR. TAMBE: In fairness, if he saw a</p> <p>5       document, the mere fact that that document</p> <p>6       was provided to him by counsel doesn't make</p> <p>7       it privileged.</p> <p>8       MR. STERN: If he's reviewing it with</p> <p>9       counsel.</p> <p>10      MR. TAMBE: He hasn't said he reviewed</p> <p>11      it with counsel, Jack.</p> <p>12      MR. STERN: I think he did.</p> <p>13      MR. TAMBE: He did not say that.</p> <p>14      MR. STERN: I'm not looking for a</p> <p>15      fight here.</p> <p>16      MR. TAMBE: Nor am I.</p> <p>17      MR. STERN: All I'm concerned about is</p> <p>18      protecting the privilege. So why don't you</p> <p>19      ask the next question and I'll either object</p> <p>20      or instruct him not to answer.</p> <p>21      <b>Q. You received a copy of the APA</b></p> <p>22      <b>sometime in 2009, correct?</b></p> <p>23      A. No, that's not what I said. What I</p> <p>24      said is if I had received it, which I don't</p> <p>25      recall, it would have been in 2009 as part of</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       the work I was doing for counsel at Barclays.</p> <p>3       <b>Q. Okay. And if you had received it,</b></p> <p>4       <b>would you have reviewed it?</b></p> <p>5       A. No, I would only have reviewed it to</p> <p>6       the extent that it was part of the work I was</p> <p>7       doing with counsel that requested me to review</p> <p>8       it. I had -- I had no interest per se in</p> <p>9       reviewing this document, which was at that point</p> <p>10      history.</p> <p>11      <b>Q. When in 2009 were you requested by</b></p> <p>12      <b>counsel to review the document?</b></p> <p>13      A. That's not -- that's not what I said.</p> <p>14      <b>Q. When in 2009 did you have these</b></p> <p>15      <b>discussions about -- which included reviewing</b></p> <p>16      <b>the APA?</b></p> <p>17      MR. STERN: I think I'm going to</p> <p>18      instruct you not to answer. I think any --</p> <p>19      I don't want you to reveal anything about</p> <p>20      your discussions with counsel.</p> <p>21      MR. TAMBE: When they occurred?</p> <p>22      MR. STERN: Yes, when they occurred,</p> <p>23      circumstances of when they occurred, any of</p> <p>24      that.</p> <p>25      <b>Q. Other than Mr. Kaplan, were any other</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2       <b>counsel involved in that event?</b></p> <p>3       MR. STERN: To the best of your</p> <p>4       recollection.</p> <p>5       A. Alan Kaplan was the lead counsel, is</p> <p>6       the assistant counsel -- was the lead counsel</p> <p>7       for Barclays. He may have had other people on</p> <p>8       his staff involved. What I recall was there</p> <p>9       was -- it was -- is that I had discussion with</p> <p>10      Alan Kaplan.</p> <p>11      <b>Q. Other than any discussions you've ever</b></p> <p>12      <b>had with any counsel for Barclays, have you ever</b></p> <p>13      <b>discussed with anyone whether the Asset Purchase</b></p> <p>14      <b>Agreement provided for a default on the repo?</b></p> <p>15      A. No, to the best of my knowledge.</p> <p>16      <b>Q. Other than counsel, have you ever had</b></p> <p>17      <b>a discussion with anyone about whether there was</b></p> <p>18      <b>a discount in the transaction where a gain was</b></p> <p>19      <b>conferred on Barclays?</b></p> <p>20      A. No, to the best of my knowledge.</p> <p>21      <b>Q. Have you talked with Mr. Tonucci about</b></p> <p>22      <b>his deposition last Friday?</b></p> <p>23      A. I have not talked to Paolo Tonucci.</p> <p>24      <b>Q. When is the last time you talked to</b></p> <p>25      <b>him?</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

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A. It must have been sometime last week as part of a -- Paolo Tonucci is the head of the Balance Sheet Group for Barclays group, and so we do have regular interaction. He had received a request from the Federal Reserve about doing an analysis on Barclays' U.S. operation and we had a discussion about this request.

**Q. Was it your understanding -- go ahead.**

A. So, just to continue, I had a quick series of e-mail this morning with Paolo Tonucci regarding the application of a limit framework as it applies to Barclays Capital by Group Treasury in London. It has nothing, nothing to do with the -- with his deposition.

**Q. The request from the Federal Reserve that you discussed with Mr. Tonucci, was that in connection with the Lehman/Barclays transaction?**

A. No.

**Q. Sir, I have placed before you a two-page document marked Exhibit 60B at a previous deposition, two-page document. Take a look at it. Let me know when you're done.**

(Document review.)

A. I think I have reviewed the document.

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**Q. Have you seen this document before today?**

A. To the best of my knowledge, no, I don't believe I was copied or copied on this document. I was not on the "to" or "CC" line.

**Q. If you look at the attachment to the document, page 2 of Exhibit 60B?**

A. Yes.

**Q. Is that a form of document that you're familiar with?**

A. This is an Excel spreadsheet. I'm not sure what some of the column means. From what I can surmise by reading this e-mail, this document was created by JPMorgan.

**Q. Who was your tri-party provider?**

A. It was our tri-party custodian.

**Q. Custodian. And it was the tri-party custodian on the Fed facility, correct?**

A. That is correct. And there were three TSLF, PDCF, OMO are programs by the Fed.

**Q. You're referring to the left-hand column of page 2 of this exhibit, correct?**

A. Uh-huh, that is correct.

**Q. Just looking at page 2 of Exhibit 60B, TSG Reporting - Worldwide (877) 702-9580**

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**the column that says "Current Market," do you see that?**

A. Yes.

**Q. And the grand total at the bottom of that column is 49.7 billion, do you see that?**

A. Yes.

**Q. Do you understand that to mean that the current market value of assets pledged by Lehman to the Fed was 49.7 billion as of the date of this report?**

MR. STERN: Objection to the form.

A. I did not create this spreadsheet so I cannot comment on what this column means.

**Q. Would you at Lehman have created analogous spreadsheets that listed the market value of securities pledged by Lehman to the Fed under the various Fed facilities?**

A. We would have, yeah, we would have.

**Q. And you would have played a role in the preparation of the review of those kind of reports?**

A. It would have been done generally by my group.

**Q. And just in round terms, was it your**

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**understanding that in the middle of the week of September 15 the borrowing that Lehman had from the Fed was approximately \$44 billion against assets of a value of \$49.7 billion?**

MR. STERN: Objection to the form.

A. I don't recall.

**Q. No recollection at all?**

A. I don't recall. I'm -- I'm --

MR. STERN: Objection to the form.

A. There may be documents that you have that would show that, but I don't recall.

**Q. Mr. Azerad, I've handed you a three-page document previously marked as Exhibit 140A.**

A. Uh-huh.

**Q. Take a moment to look at the three pages. Let me know when you're done.**

A. Sure.

(Document review.)

**Q. You've reviewed it?**

A. Yes, I have.

**Q. And that's an e-mail from you to Kelly, Martin Kelly, and others, right?**

A. That is correct.

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Q. And you attach a file called the Summary File Inventory, do you see that?

A. Yes.

Q. Turn to page 2 of this exhibit, Exhibit 140A. Could you describe for me what information is shown on that page?

A. It's showing at a high level the inventory of Lehman Brothers, Inc., using the same classification that Lehman used in its external filing. So the asset class, CDs and other money market instruments, corporate debt, corporate equities, government and agencies, mortgage and mortgage-backed derivatives. There is an adjustment, which I don't recall what it was, and that's -- that is how the inventory was typically classified.

Q. And --

A. No, please.

Q. In terms of the valuation of the inventory?

A. Uh-huh.

Q. What valuation would have been used to prepare this spreadsheet?

A. Treasury used a system at Lehman TSG Reporting - Worldwide (877) 702-9580

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called GFS, which I believe stands for Global Financial System, and so we were using the same valuation system as product control.

Q. Okay. So you would have used GFS to prepare a spreadsheet of this nature?

A. That would have -- I don't recall how this spreadsheet was prepared. Generally, when we were -- the basis of our reports was generally GFS. It may have been, and again, I don't recall, there may have been a file that I received from someone else asking me to use this file which contained market value information, but in general, Treasury was relying on GFS to value assets.

Q. The third column over has a heading "Available for Transfer," do you see that?

A. Uh-huh.

Q. Do you have an understanding of what was reflected in that column?

A. I don't recall at this point.

Q. Turn to the last page of Exhibit 140A?

A. Yes.

Q. Is that a form of document that you recognize?

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A. Yes.

Q. And what is it?

A. One analysis that we tried to do the week of September 15th was to understand the secured funding transaction existing between Lehman U.S. broker-dealer, LBI, and Lehman European broker-dealer, Lehman Brothers International Europe, which is typically referred to by its acronym, LBIE.

The reason why it became an important analysis is LIBE had filed for bankruptcy, I'm not sure if it's exact term, but was no longer operating as of September 15th, and so our understanding at that -- the base -- the assumption behind this analysis is that the secured funding transaction that existed between these two entities would not -- would not be unwound, meaning that securities that financed by LBI would not return to LBI and vice-versa. That's column A and column B.

Q. What's column C?

A. Column C refers to the matched book. "Matched book" is a term which is, in my mind, overused, but in that particular instance what

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it meant was the series of reverse repo and repo put on by the repo desk or the secured funding desk in Prime Services, so they were borrowing and lending securities.

Q. As part of a prime brokerage functions or part of a liquidity function for Lehman or both?

A. No, as the second term in this column C indicates, "Prop," it was meant to be proprietary, meaning it was supposed to make money for the -- for Lehman.

Q. So running a matched book to earn fees, effectively?

A. That's not the way that you typically make money in a matched book that you run for profit. They are -- I'm talking here in conceptual terms, not specifically relating to these numbers because I don't have knowledge how they intended to make money, but they typically make money because of maturity transformation or because of credit risk, meaning that you reverse securities at a higher haircut than what you lent to the street.

Q. And did you have an understanding

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during the week of September 15th that the size of the matched book was being shrunk as part of the process of selling assets from Lehman to Barclays?

MR. STERN: Objection to the form.

A. I may -- I may recall that it was being shrunk. If you look at page 3 of the Exhibit 140A, the majority of the matched book is in an asset class called Government & Agencies, which was -- generally, it's a very liquid asset class. A lot of financing transaction is not only through tri-party repo, but also through a central clearing counterparty called the FICC, and most of our effort in terms of understanding secured funding was not -- was not focused on that particular line.

**Q. If you look at the last column, which is titled "-(A)+(B)+(C)," do you have any understanding of what information is contained in that column or how it relates to the other columns?**

A. Well, you mean what does it -- can you just rephrase your question?

**Q. I can see the total. I'm just trying**  
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to figure out what's the significance of the last column? What does it identify?

A. When you look at -- again, I don't recall precisely why I did this analysis, but from kind of conceptually what was based on my understanding today, what the analysis is trying to show is if you look at securities that LBI had, they can be categorized in kind of two groups: They're securities owned by LBI and securities borrowed by LBI.

The securities borrowed by LBI would be in column B and column C and securities -- column A is an adjustment because these were securities most likely, though not with certain, that was lent to LBIE. So, to the extent that they were owned by LBI, it would probably be safe to assume that they would not be returned to LBI.

**Q. So the last column is just showing that information on that basis?**

A. So that column is just how much securities net of what we have lent we have borrowed from LBIE, and then the matched book, prop matched book to be precise, of LBI is.

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That's what -- that's what -(A)+(B)+(C) seems to indicate.

Then --

**Q. Go ahead.**

A. -- some of the securities borrowed, that's the bottom, just -- so just to continue, can also be used to cover shorts. That's the other thing to also understand, that the reverses can also be used to cover short positions.

MR. STERN: When you're done with this, I would like to just take a short break.

MR. TAMBE: That's fine. We can break now.

(Recess; Time Noted: 10:59 A.M.)

(Time Noted: 11:06 A.M.)

BY MR. TAMBE:

**Q. On the second page of Exhibit 140A, the "Available for Transfer" column?**

A. Yeah.

**Q. Do you recall any discussions during the week of the 15th about identifying assets of LBI that were available for transfer to**

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Barclays?

A. Yes.

**Q. Can you just generally describe that process?**

A. My role in that process was, as part of the role in Treasury of liquidity reporting, we had an understanding about the secured funding of LBI. We also had because it was a source, it was a use of unsecured funding about the unencumbered assets, meaning assets funded unsecured left in LBI, so it was I was asked during that week to help various people with trying to identify assets that could be transferred to Barclays.

**Q. Do you recall whether it was earlier in the week or later in the week that you were asked to be involved in this process?**

A. I don't remember when it started. I was clearly involved starting the 18th. It may have been earlier.

**Q. And who had asked you to become involved in this process?**

A. I don't recall precisely. My best recollection would have been Paolo Tonucci.

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**Q. And do you recall who else was involved in this process?**

A. Well, Martin Kelly was involved, Gerry Reilly was involved, Ian Lowitt was involved, Frank Pearn was involved, and Operations obviously was involved as well. So people like Jim Hraska would have been involved as well.

**Q. And on Friday, the 19th of September, do you recall any discussions about identifying a specific target number of additional assets to be identified for transfer to Barclays?**

A. I don't recall specific -- I don't recall specifically a target number. I do recall that there was additional work on the 19th and in subsequent days about assets to be transferred to Barclays.

**Q. And you were involved on the 19th and on subsequent days in that process of identifying additional assets to be transferred to Barclays, correct?**

A. I was, although my role became more of a project -- more of a coordinator as opposed to a data provider. One of the issues that we faced on the 19th, and it did not get resolved

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prior to when the transaction closed, was that we relied, to do some of the analysis, we relied on information provided by JPMorgan Chase, and I believe starting on the 19th, JPMorgan Chase did not provide us with the information. So the data that I had access to was not -- was no longer reliable and Operations became the primary source of data.

**Q. Starting on the 19th, were you relying also on information provided by Bank of New York?**

A. Starting on the 19th, I recall having a series of e-mail exchanges with people at Barclays about trying to understand which assets had been transferred between Lehman and Barclays. There were, at least from the Lehman perspective, I obviously cannot talk on behalf of Barclays, there were some uncertainty about which assets had been received by Barclays. So the files that Barclays sent me may have been created by Bank of New York. That I don't know. I just thought of them as being the Barclays file.

"I don't recall" as opposed to "I

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don't know."

**Q. Do you recall any process of reconciling the Barclays file or the Bank of New York file against the Lehman information concerning the same assets?**

A. Well, we had a list of assets that we thought got transferred to Barclays. Barclays had a list of assets that it claimed to have received. So part of our job was to compare the two files and to flag out any differences.

**Q. And were you involved in that process?**

A. I was involved in that process.

**Q. And tell me roughly how long that process took to run its course.**

A. I don't recall when this process ended. At some point what I recall is that the process migrated to operations. Again, just to repeat myself, after the 19th, Treasury, for a variety of reasons, was no longer a reliable source of information.

So we had people who were able to do what I would call number-crunching analysis, but we had to rely on other people's files to do the data, and to the extent that there was need for

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a conciliation, it would have been done by Operations I believe within Lehman.

**Q. I've handed you a multi-page document previously marked as Exhibit 2. Take a look at the cover e-mail and the attached spreadsheets. Let me know when you're done.**

(Document review.)

A. Before we review the document, if I may ask a question. Is a question going to be on the spreadsheet, and at which point we need to review the spreadsheet carefully, or is it going to be on the cover e-mail?

**Q. Let me start with the cover e-mail, and I think what's the first page of the spreadsheet or what appears to be a summary page.**

A. Okay.

**Q. I'll start there, but I might ask you questions about the spreadsheet later, so let's take it in stages.**

A. Okay. I will then do just a cursory review of the spreadsheet.

**Q. That's good idea.**

(Document review.)

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2 Barclays became -- was already, but became one  
3 of the largest funding source of LBI, was to try  
4 to understand what exactly -- what exactly  
5 Barclays and Lehman entered into, not -- just on  
6 that particular day, not -- not the broad  
7 context.

8 Q. And that process, is that the same  
9 process you were testifying about before, which  
10 is going through and identifying assets that  
11 were available to be transferred to Barclays?

12 A. No, these were two separate things.  
13 They were what I would call, even though the  
14 term is probably slightly ironic, but there is  
15 what I would call the "business as usual  
16 liquidity reporting," which that week was  
17 anything but usual, and we were trying to  
18 understand the liquidity position of LBI because  
19 LBI's position that week was precarious, was  
20 fragile, and so getting a handle of just where  
21 LBI's liquidity position was was a critical  
22 mission.

23 That's -- but that's separate from  
24 what I would call the special project or the  
25 one-off requests that I was working on in  
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2 conjunction with a transaction between Lehman  
3 and Barclays.

4 Q. Was part of what you were doing, these  
5 two different aspects of the work you were doing  
6 on the 18th and 19th, do I understand it the  
7 assets that were being pledged under the  
8 Barclays repo could in fact be purchased by  
9 Barclays?

10 MR. STERN: Objection.

11 A. No.

12 MR. STERN: Objection to the form.

13 A. Again, I don't want to go, because --  
14 into kind of legal terms of purchase. I prefer  
15 to use the word "transfer."

16 Q. So were you trying to get an  
17 understanding of the assets that were being  
18 pledged in the Barclays -- could be transferred  
19 to Barclays?

20 A. Yes, they could be transferred to  
21 Barclays.

22 Q. And that was part of what you were  
23 trying to do, identify if they could be  
24 transferred to Barclays?

25 A. Identify assets that could be  
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2 transferred to Barclays.

3 Q. And who was helping you in that task?

4 A. There were various people in my team.  
5 I think that one -- I mean, the one name that  
6 kind of stuck in my head on the 18th, because  
7 she also worked very late that night, was Cindy  
8 Aprigliano, A-P-R-I-G-L-I-A-N-O.

9 Q. Anyone else you remember?

10 A. I believe that Cindy had under her a  
11 brand-new analyst who just started at Lehman a  
12 few months ago by the name of George Hawes,  
13 H-A-W-E-S. Cindy and George were typically  
14 doing analysis on kind of secured funding.

15 There were other people also involved.  
16 I don't remember whether they were involved that  
17 particular -- that particular night of the 18th.

18 (Exhibit 176, a document bearing Bates  
19 Nos. 10331692, marked for identification, as  
20 of this date.)

21 Q. I've handed you a one-page document  
22 marked Exhibit 176. Let me know when you're  
23 done reviewing it.

24 (Document review.)

25 A. Okay.

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2 Q. Have you seen this document before  
3 today?

4 A. I don't recall precisely, but clearly  
5 the fact that my name is mentioned means that it  
6 must have been sent to me.

7 Q. And do you see this is a series of  
8 e-mails concerning the pricing and market  
9 value --

10 A. Uh-huh.

11 Q. -- of the Barclays repo collateral?

12 MR. STERN: Objection to the form.

13 A. I'm not -- well, it's hard to tell  
14 without looking at the attachment. What -- what  
15 this e-mail traffic seems to be focused on was  
16 trying to find a price for Cusips, but again,  
17 containing the -- I'm assuming containing the  
18 attached file, which I have not reviewed.

19 Q. And do you have a recollection of a  
20 process on the 19th of September where you were  
21 retrieving GFS pricing for certain securities in  
22 connection with the Lehman/Barclays transaction?

23 A. We were trying to -- I think, as I  
24 mentioned earlier, GFS was our primary source of  
25 data in Treasury, and GFS had market value

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2 information in the securities.

3 **Q. And do you have a recollection of a**  
4 **process on the 19th where you were getting**  
5 **information from GFS for the purpose of valuing**  
6 **the assets in the Lehman/Barclays transaction?**

7 A. The report that we were providing on  
8 the 19th to the extent that it came from Treasury  
9 as opposed to us using someone else's file,  
10 would have been most likely sourced from GFS.

11 **Q. Do you recall there being any**  
12 **discussion on the 19th about whether you were**  
13 **going to use GFS pricing or Bank of New York**  
14 **pricing or some other pricing for these assets?**

15 A. No, on the 19th -- I don't recall.  
16 What I recall on the 19th is that we were  
17 operating under a great deal of uncertainty  
18 primarily because we did not receive the file  
19 from JPMorgan or information from JPMorgan.  
20 That's what I primarily recall from what  
21 happened on the 19th.

22 **Q. Was it your understanding on the 19th**  
23 **that the Fed repo facility was terminated?**

24 MR. STERN: Objection to the form.

25 A. During the -- 19th is a Friday, I  
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2 believe. During the 19th I believe I became  
3 aware that there would be a hearing in front of  
4 the judge that night, but I'm not -- I was, to  
5 the best of my recollection, I was not aware of  
6 the fact that you presented, that the Fed  
7 facility would be canceled.

8 **Q. Was any Fed borrowing in place on**  
9 **Friday, the 19th?**

10 A. I don't recall. There were -- one of  
11 the earlier exhibits that you showed had like  
12 three Fed borrowings, the OMO, the TSLF and the  
13 PDCF. I don't recall where we stood. My --  
14 there must be reports, but I don't remember  
15 today.

16 **Q. Do you have any recollection that the**  
17 **Barclays repo facility that we're talking about**  
18 **on the 18th, when that went into place, the Fed**  
19 **facility, the borrowing under the Fed facility**  
20 **was reduced down to zero?**

21 A. Not in the way that you cannot -- not  
22 in the way that you -- that you describe it. On  
23 the 18th, typically the -- if you go back prior  
24 to the 18th, typically the Fed would be funding  
25 what was left, what --

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2 I shouldn't say that. Can you just  
3 repeat the question?

4 (Record read.)

5 A. I don't recall.

6 **Q. So, as far as your recollection goes,**  
7 **on Friday, the 19th, there could have been**  
8 **borrowings under the Barclays repo as well as**  
9 **under the Fed facility?**

10 A. No, on the 19th, I would have known  
11 how LBI would have been, to the best of my  
12 knowledge, and there were, as I said, there was  
13 uncertainty, but I would have known that there  
14 were -- that the PDCF would not -- would have  
15 been reduced to zero.

16 What I was trying to say is that I  
17 would have looked at the -- I would have looked  
18 at the outputs. This is kind of how LBI was  
19 funded that night. I was -- I don't recall  
20 having any discussion of the Barclays repo  
21 resulting in the Fed facility being reduced to  
22 zero.

23 **Q. Okay. The issues you referenced**  
24 **before about having -- not getting the data from**  
25 **JPMorgan on the 19th?**

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2 A. Uh-huh.

3 **Q. Did Lehman get, subsequent to the**  
4 **19th, data from JPMorgan with market value**  
5 **calculation?**

6 A. It may have, but at that point I don't  
7 think that when I transferred from Lehman to  
8 Barclays that JPMorgan provided the information.  
9 It may have provided it subsequent to that, but  
10 I'm not aware of it. I mean, just --

11 **Q. Finish your answer. Go ahead.**

12 A. I just want to add one thing. I do  
13 recall receiving a file on Sunday, not directly,  
14 but indirectly, but the file was from JPMorgan,  
15 but the file had some errors in it which was --  
16 and I don't think that we -- and that was, that  
17 was I believe having to do with securities held  
18 by JPMorgan, but it was, because it had errors  
19 in it, it was not deemed to be a dependable  
20 file.

21 **Q. Do you remember from whom you got that**  
22 **file?**

23 A. No, I don't remember.

24 **Q. And your recollection is that the file**  
25 **that you got on that Sunday did not have**

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1 **HIGHLY CONFIDENTIAL - R. AZERAD**  
2 **information concerning the Barclays repo**  
3 **securities?**

4 A. To my recollection, the file that I  
5 received on Sunday had to do with securities  
6 held by JPMorgan.

7 **Q. So not related to Barclays' repo, is**  
8 **that what you're saying?**

9 A. Well, you can always create a link  
10 between the two, but not -- but in a stricter  
11 sense, no.

12 **Q. I'm just trying to understand --**

13 MR. STERN: In other words, related to  
14 is a very broad concept.

15 **Q. Let me ask you then, did the JPMorgan**  
16 **valuation that you received that Sunday contain**  
17 **valuations of the securities that had been**  
18 **pledged by Lehman to Barclays under the Barclays**  
19 **repo?**

20 A. No. Again, it refers to my knowledge,  
21 it refers to securities held by JPMorgan. It  
22 would have been -- it would have been a fact  
23 which would have been helpful had it been  
24 accurate because we were trying to understand  
25 which -- to reconcile what we thought was

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2 transferred to Barclays and what Barclays said  
3 was transferred to it, and obviously part of the  
4 uncertainty is what security did JPMorgan send  
5 to Barclays versus what securities did JPMorgan  
6 had kept.

7 So having information related to the  
8 securities that JPMorgan had kept would have  
9 been helpful by just kind of -- in us trying to  
10 understand what was transferred to Barclays from  
11 our perspective, but there were, from what I  
12 recall, errors in the file.

13 **Q. And what's your understanding about**  
14 **the nature of the errors? Were they valuation**  
15 **errors? Identification of Cusip errors? What**  
16 **was the nature of the errors?**

17 A. From what I remember, they were  
18 double-counting of securities.

19 **Q. Were you involved in any efforts to**  
20 **rectify those errors, to have a conversation**  
21 **with JPMorgan to correct the file?**

22 A. From what I recall, when JPMorgan sent  
23 us the file, it was not -- it was part of an  
24 ongoing negotiation between Lehman and JPMorgan.  
25 I was not part of these discussions.

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1 **HIGHLY CONFIDENTIAL - R. AZERAD**  
2 **Q. I've handed you a two page document**  
3 **marked as Exhibit 157A. Take a moment to look**  
4 **at it. Let me know when you're done.**

5 (Document review.)

6 A. I'm done.

7 **Q. Have you seen this document before**  
8 **today?**

9 A. No, I have not. I don't believe I was  
10 copied on any of these e-mails.

11 **Q. I just want to ask you a question**  
12 **about the topic that's discussed in one of these**  
13 **e-mails. That's in the first -- the second**  
14 **e-mail on the first page.**

15 A. The e-mail from David Aronow to Paolo  
16 Tonucci?

17 **Q. Yes, with a copy to Ian Lowitt. And**  
18 **there's a reference in the first paragraph of**  
19 **that e-mail that "Barclays' Operations team has**  
20 **recalculated the value of the collateral that it**  
21 **received from us last night and they are more**  
22 **than fully collateralized, including the**  
23 **haircuts applied," do you see that?**

24 A. Uh-huh.

25 **Q. Did you have any discussions with**

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2 **anyone at Barclays on the 19th about Barclays**  
3 **being more than fully collateralized, including**  
4 **the haircuts applied?**

5 A. No, I don't remember.

6 **Q. Do you have any reason to believe that**  
7 **Barclays was not fully collateralized on**  
8 **September 19th?**

9 MR. STERN: Objection to the form.

10 A. I believe, although I don't have  
11 detailed knowledge, but the transaction on the  
12 18th was done under the tri-party repo agreement  
13 between Lehman and Barclays and it would have  
14 been under a tri-party repo agreement the  
15 responsibility of a custodian to make sure that  
16 Barclays was appropriately collateralized.

17 **Q. And do you have any reason to believe**  
18 **that Barclays wasn't fully collateralized on the**  
19 **19th?**

20 MR. STERN: Objection to the form.

21 A. I, again, to repeat myself, my  
22 understanding, which may not be what happened,  
23 but my understanding was that the transaction on  
24 the 18th was done under a tri-party repo  
25 agreement and, therefore, it would have been

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JPMorgan Chase's responsibility to make sure that there was -- I believe JPMorgan was a custodian -- to make sure that there would be appropriate collateralization. This is part of -- this is part of a custodian's responsibility.

**Q. I'm just asking a slightly different question. In all the things that you have heard and looked at, do you have any reason to believe that Barclays was not fully collateralized on the 19th?**

MR. STERN: Objection to the form.

**Q. Have you seen any documents that suggested that to you? Has anyone said that to you?**

MR. STERN: Objection to the form.

A. I don't recall.

**Q. Was it your understanding on the 19th that Lehman was standing down from transferring any further collateral to Barclays?**

A. Can you -- I'm sorry. I'm not familiar with the word "standing down." Can you just describe what you mean?

**Q. Let's put the exhibit aside. Was it**

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**your understanding midday on the 19th that Lehman was stopping any further transfers of collateral to Barclays?**

A. No, that was not my understanding.

**Q. Your understanding was the opposite, correct?**

A. I was continuing to do work on the 19th of securities that could be transferred from Lehman to Barclays.

**Q. Was it your understanding that the securities that were going to be transferred from Lehman to Barclays on the 19th, that those were separate and apart from the repo transaction?**

MR. STERN: Objection to the form.

A. What do you mean by the "repo transaction"?

**Q. The Barclays repo transaction on the 18th that we've been talking about.**

MR. STERN: Objection to the form.

A. My understanding -- well, I was led to believe, because I was asked to continue working on the 19th on a list of assets that could be transferred from Lehman to Barclays. So I

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was --

That's my answer.

**Q. And in connection with that effort on the 19th, did anyone ever say to you that the assets that you were identifying to be transferred from Lehman to Barclays were in connection with the Barclays repo transaction?**

A. So just to rephrase your question, it's not that -- I knew that these assets were going to be transferred. What I said is that they could be transferred. This was the purpose, this was the purpose of my analysis was available for transfer or could be transferred.

**Q. Now do you have my question --**

A. So, to go back to your question, the repo transaction on the 18th was done on the 18th and it was done. So, to the extent that there were -- I was working on assets outside of the repo transaction of the 19th that could be transferred to Barclays.

MR. STERN: Are we done with 157A?

MR. TAMBE: For now.

MR. STERN: You're handing the witness Exhibit 151A?

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**Q. Yes. Mr. Azerad, I've handed you a three-page document marked Exhibit 151A.**

A. Uh-huh.

**Q. Take a look at that document. Let me know when you're done.**

A. Sure.

(Document review.)

A. Before you start your question on Exhibit 151A, I'm not -- it's not clear to me that the third page of the attachment, the final page, is related to this series of e-mails, but perhaps it is.

Yes, I guess it is. The details of 15c3. That's fine. I'm sorry, I didn't see the beginning.

MR. STERN: That's fine. Why don't you take your time and read all of these e-mails.

**Q. Let me know when you're done reviewing those e-mails.**

A. Okay. I'm done.

**Q. Do you recall having seen this collection of documents before today?**

A. Yes, I recall seeing this document

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before today.

**Q. And this is in connection with the preparation of the opening balance sheet that you talked about before, correct?**

A. That is correct.

**Q. And you were involved in that process, correct?**

A. I was involved in that process.

**Q. Drawing your attention to your e-mail, this is the one sort of the third e-mail down on the page 1.**

A. Is that the one sent at 10:27?

**Q. That's the one sent at 10:27. And this is September 20, the Saturday, correct?**

**You have a calendar there?**

A. Based on the calendar, yes, it is.

**Q. And in your e-mail to Martin Kelly and the others, were you attempting to identify broadly the components of the asset side of the balance sheet?**

A. That is, yeah, my -- what I was trying to do was two things. I was looking at the inventory -- at the inventory being transferred and also the 15c3-3 claim as well.

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**Q. Okay. In your e-mail from 10:27, which of those -- do you have the 15c3-3 claim included as part of the items that you're listing there?**

A. Not as part of my e-mail as of 10:27.

**Q. Okay.**

A. Well, let me step back.

MR. STERN: I think what's confusing is there's two e-mails by Mr. Azerad.

MR. TAMBE: No, there's only one timed 10:27. There's only one timed 10:27.

MR. STERN: I see what you're saying, but there's two e-mails in this document from Mr. Azerad. I think that's the confusion.

MR. TAMBE: No, it's not. That's the confusion you're adding.

MR. STERN: I'm not adding confusion. I'm just trying to clarify.

A. There were the question of things which I'm kind of trying to recollect, which I don't have a good recollection.

MR. STERN: Let me just hear what the question is. What is the question?

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(Record read.)

A. Yes, there is one somewhat confusion is as follows: In the first sentence of that e-mail, it says, "Classifications of the assets by asset class should be done by end of day today." What I don't recall is what assets I meant when I was referring to that.

Then I specifically made two -- I specifically listed two assumptions it was going to use to do the work, neither of which had to do with the 15c3-3, both of which had to do with transfers of securities.

So the reason I was confused is because at the top of the e-mail, there was a discussion of the 15c3-3. I don't know what -- when the "classification of the assets by asset class" mean. There's -- there's two ways in which I can describe it, one which would include, the other one which would not include, and I don't recall which is the correct interpretation.

**Q. But just focusing on your e-mail at 10:27, you had two components there, right? You had the repo and then you had the non-actionable**

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**box, correct?**

A. These were the two assumptions.

**Q. And then Mr. Tonucci, in response to your e-mail of 10:27, states, "We also need to add the 15c3 cash in the receivables." Do you see that?**

A. Yes, I see that at 10:31.

**Q. And in a later iteration of your calculation, did you in fact add the 15c3 cash as part of the calculation?**

MR. STERN: Objection to the form.

A. I think when I look at my first e-mail, the one sent at 10:34, I would say that I didn't have the details about how the lockup, which is either cash and/or securities, so I didn't have the mix of a lockup behind the 15c3-3.

If I look at the spreadsheet attached on the last page, it's -- the last line above the end footnote says "Total Segregated." It didn't -- I don't think it has a breakdown how the segregation was done.

**Q. At some point after you wrote these e-mails or received these e-mails in Exhibit**

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**151A did you identify the amount of 15c3-3 amounts that would be included on the opening balance sheet?**

A. This is -- this is what I recall: There was some uncertainty, understandable uncertainty, but nevertheless, uncertainty, about the amount of cushion, what I would call cushion, but I want to -- because it's a vague term, I want to kind of define it in the 15c3-3.

At some point in the process, and I don't remember when, I was given a number which was somewhere between 7 and 8 hundred million dollars to put on the opening balance sheet. And now let me define the word "cushion." The 15c3-3 obviously is something that broker-dealers have to do per the regulations. It typically represents money segregated which would present customer assets which, by segregation, that's the way that the broker-dealer would protect these assets.

There is what I would call the cushion, which is that the broker-dealer, for a variety of reasons, some of them mandated by the S.E.C., some of them just as part of the normal

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process, would typically segregate more assets than what it has to, strictly speaking, to protect customer assets.

If you look at the spreadsheet attached on page 3, it talks about the 3 percent ADI, that's one source of the cushion, and then it also talks of specifically the word "cushion" is mentioned twice in the spreadsheet, one as for the customer, the other one for PAIB.

This is what I meant when they said that there was uncertainty around this type of cushion.

**Q. You said at some point you were provided a number of 700 million or 800 million?**

A. Between -- I don't exactly remember the number, but it was between the 700 and 800 number.

**Q. Who provided that number to you?**

A. I don't remember. It may have been Paolo Tonucci. It may have been Martin Kelly. I don't remember.

**Q. Once that number was provided to you, did you include it on the draft of the balance sheet that you were preparing?**

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A. I don't remember if I -- if I kind of revised the draft of the balance sheet subsequent to that, but if I had, then, yes, I will have used that number.

**Q. Going back to your 10:27 e-mail on Exhibit 151A?**

A. Uh-huh, yes.

**Q. The bottom half of the page, your first item is the repo with Barclays as of Thursday night, do you see that?**

A. Yes.

**Q. And you have in parentheses 49 billion?**

A. Uh-huh.

**Q. Right?**

A. Yes.

**Q. And you have that broken out as 42 billion of securities and 7 billion of cash, do you see that?**

A. Yes.

**Q. The 42 billion of securities, do you recall what your valuation was based on?**

MR. STERN: Objection to the form.

A. I believe that, and again, if you read

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the bottom of the e-mail, the "P.S." section, it was based on the repo file sent by Operations on Friday morning and the box report, which relied on GFS as of Friday morning.

**Q. And do you recall the sourcing of the prices that were in those reports, the Ops -- the files sent by Ops and the box report?**

A. I don't remember the source of the pricing sent by Ops. The box report should have been, assuming that this was our usual box report, should have been sourced from GFS.

**Q. When you referred to the repo file sent by Ops, is there a particular file or particular person that you're referring to when you refer to the repo file sent by Ops?**

A. I don't remember precisely what happened, meaning which person in Ops sent the file. What I do remember is, again, because -- just to repeat myself -- because Chase did not provide us with the information, meaning the -- on the normal day, Chase would provide us with a file that would have how the securities were being financed. Chase did not provide us with this information on the 19th, and so we had to

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rely on -- we could not rely -- I'm sorry, I was interrupting myself. We could not rely on our usual source of data, which was GFS. We had to rely on Operations to give us this information.

(Exhibit 177, a document bearing Bates Nos. 303398 with attachment, marked for identification, as of this date.)

**Q. Sir, I have placed before you a three-page document marked Exhibit 177. Take a moment to look at it. Let me know when you're done.**

A. Okay.

**Q. You done?**

A. No, I'm not done. I'm just reading through it.

**Q. Let me know when you're done. (Document review.)**

A. I'm done.

**Q. If you look at the back end of this document, an e-mail chain, it starts with some of the same e-mails about the balance sheet that we were looking at before. See that?**

A. Yes.

**Q. And there's a discussion on page 1 and TSG Reporting - Worldwide (877) 702-9580**

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**2 about the reserve calculation on the 15c3 amounts, do you see that?**

A. Yes.

**Q. Did you play any role in doing the reserve calculations on the 15c3 amounts?**

A. Can you -- what do you mean by "role"?

**Q. Did you do the calculations, the reserve calculations?**

A. No, I was -- I did not do the calculation.

**Q. Who did?**

A. It would have been someone in Tony Stucchio's group, who is -- I'm assuming Tony Stucchio must have been listed.

**Q. Anthony Stucchio?**

A. Anthony Stucchio.

**Q. What group was that?**

A. He was in the -- head of Regulatory Reporting at Lehman. He was under Martin Kelly. I don't know if he was a direct report of Martin Kelly or whether -- but he was in Martin Kelly's group.

**Q. And would those reserve calculations have been provided to you to be included on the TSG Reporting - Worldwide (877) 702-9580**

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**balance sheet?**

A. It would have -- it would have been one of the inputs that I would have used to calculate the cushion, which, again, I don't want to repeat myself, but as I defined it in one of my previous answers.

**Q. One of the people on this e-mail chain is someone called Irina Veksler?**

A. Yes.

**Q. Do you know who that is?**

A. Irina Veksler was reporting to me. She was part of the Liquidity Reporting Team. She was involved that weekend in drafting the opening balance sheet.

**Q. Sir, I've handed you a two page document marked Exhibit 147A.**

A. Yes.

**Q. Take a moment to review that. I'll ask you a couple questions.**

(Document review.)

A. I've read the e-mail.

**Q. Starting from the back of the e-mail chain, it's the e-mail that begins at the bottom of page 1 over to page 2?**

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A. The e-mail sent at 6:45 by Jasen Yang?

**Q. That's right, to you and others.**

A. Yes.

**Q. And in that e-mail is a discussion about a file or schedule produced by Barclays' Ops of the collateral currently held at BONY, do you see that?**

A. Yes.

**Q. Do you recall having any discussions with Jasen Yang about the subject matter of this e-mail?**

A. I was involved on the 19th and in subsequent days in trying to understand which securities had been transferred to Barclays. It was a difficult exercise from the Lehman standpoint because Chase did not provide us with this file, which would have been the case not under kind of normal -- under normal circumstances.

So we were -- so what we did, for lack of a better word, as a second best solution was asking Barclays to send us their file.

**Q. And then the first e-mail on this page, page -- the first page of Exhibit 147A, do**

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you see that as an e-mail from you back to Jasen Yang providing a file back to Jasen?

A. I don't recall exactly what it says, but the way I read the e-mail now, the one at 6:15, I'm assuming that's the one you're referring to from my BlackBerry?

Q. No, I'm actually referring to the e-mail at the very top of the page.

A. I'm sorry.

Q. The one at 7:19.

A. The one at 7:19?

Q. Yes.

A. Yes, the 1.9 billion I had -- was not part of a reconciliation process. This was -- this was -- I mentioned that I was, on the 19th and in subsequent days, I was involved in trying to identify additional collateral that could be transferred to Barclays, and I don't remember precisely what the 1.9 billion refers to.

One of the former -- one of the previous exhibits that you showed me also had a 1.9 billion which was described as being the non-actionable box, which is a Lehman term. So let me -- I just want to kind of define it. The

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non-actionable box is a box of assets which is financed on an unsecured basis. The reason it's called non-actionable is because it's -- as part of our analysis of the box, we try to separate assets which we thought were left in the box, left unencumbered, but could be financed from assets left in the box, but couldn't be financed on a "business as usual" basis. That could be the same 1.9 billion.

(Exhibit 178, an e-mail from M. Kelly to R. Azerad dated September 20, 2008, with attachment, marked for identification, as of this date.)

Q. Sir, I handed you a two-page document marked Exhibit 178.

A. Let me read the document.

Q. Let me know when you're done.

(Document review.)

A. I've read the document.

Q. This is a document you've seen before today?

A. Yes, I've seen this document before today.

Q. And the attachment to the document is

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a draft version of the balance sheet that you were working on that weekend, correct?

A. That is correct. I was not the only person working on the draft, but I was one of the contractors.

Q. And focusing on the e-mail in the first page of the document, the e-mail from Brett Beldner to Martin Kelly?

A. Yes.

Q. With you as a copy?

A. Uh-huh.

Q. That e-mail states that you focused on the asset side of the balance sheet; is that right?

A. That is correct.

Q. Going to page 2 of the exhibit.

A. Yes.

Q. And focusing on the asset side, you've got a line item for cash and cash equivalent, do you see that?

A. Yes.

Q. And then you have a second category for inventory, do you see that?

A. Yes.

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Q. And the valuation on the inventory is 44,846, correct?

A. Yes.

Q. I assume that's in millions?

A. That is a fair assumption.

Q. And then you have a line item for receivables with, in parentheses, 15c3 lockup release of a billion, right?

A. Yes.

Q. The inventory total number that you have there, 44,846, do you recall what pricing sources that was based on?

A. I believe that you had the information in one of the previous exhibits.

Q. So the Ops file and the box report?

A. That is, again, I -- that's what I -- in that previous exhibit, which I'm assuming was sent prior to this e-mail, this is what I claim we would have been using. I don't recall whether I would have changed my source information, but that's what I claim at that point. So, to the best of my recollection, this is what I used.

Q. And to the best of your recollection,

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during that weekend, the weekend of, what is it, the 20th/21st, do you recall changing your pricing source information for the pricing of the inventory?

A. I don't recall.

**Q. On the liability side of the balance sheet, did you play any role in providing that information?**

A. If any role I played was for 45 billion for the repo, which is the part of the financing for cash received from Barclays.

**Q. There's a line item on that balance sheet, page 2 of Exhibit 178, says equity, 3.346 billion. Do you see that?**

A. Yes, I see.

**Q. Do you have any understanding as to what that line item relates to?**

A. No. I mean, it's, besides what it says here, the e-mail that you -- based on the e-mail that you provided in Exhibit 178 on the first page, I'm assuming that this part of the balance sheet was created by Brett Beldner.

**Q. And what was Brett Beldner's position?**

A. He was the head of the U.S. Accounting  
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**HIGHLY CONFIDENTIAL - R. AZERAD**  
Policy at Lehman Brothers, reporting to Mary Stewart, who reported to Martin Kelly.

(Exhibit 179, an e-mail chain, the earliest in time from G. Reilly to K. Wong, dated September 22, 2008, with attachment, marked for identification, as of this date.)

**Q. Keep that one before. I'm going to hand you an exhibit marked 179.**

A. Okay.

(Document review.)

A. I've seen this Exhibit 179.

**Q. I just want to -- if you could turn to page 2 of Exhibit 179.**

A. Yes.

**Q. And it's similar in form to page 2 of Exhibit 178 that we were looking at before, correct?**

A. That is correct.

**Q. Okay. So there's a slight difference in the total values as well as some of the line items, do you see that?**

A. Yes, I see that.

**Q. Okay. Do you have any understanding of the line item and assets that reads**

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**HIGHLY CONFIDENTIAL - R. AZERAD**  
"Derivatives and Other Contr." with a value of 80 million? Do you have any understanding as to what that relates to?

A. No, I don't recall.

**Q. And on the next item up, the next item up, which is "Commercial Paper & Money Market Instruments," there's a similar item on Exhibit 178, but with a different value. Do you have any understanding as to the reason for the differences?**

A. No, I mean, I can see that the differences in value is \$63 million, which on a transaction -- a balance sheet of about 53 billion would not have -- it's very small. I don't remember why the number changed. There were uncertainty throughout the weekend and on subsequent days trying, again, trying to understand which assets were transferred, that could be transferred, so trying to establish the opening balance sheet.

**Q. Now, I apologize if I have already asked you this, but do you have a recollection of excess margin on derivatives transactions being transferred from Lehman to Barclays?**

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**HIGHLY CONFIDENTIAL - R. AZERAD**

A. What do you mean by "excess margin on derivatives transactions"?

**Q. There's reference in some of the documents to a margin concerning the OCC trades.**

A. Okay.

**Q. Do you have an understanding or recollection of any excess margin on OCC transactions being transferred from Lehman to Barclays?**

A. I don't recall.

**Q. What, if anything, have you heard about OCC margin in connection with the Lehman/Barclays transaction?**

A. From what --

MR. STERN: This should exclude any conversations with counsel.

THE WITNESS: I understand that.

A. I believe that when I think of OCC margin, and again, this is my recollection, this might not be accurate, there were some of the margin being held by -- by either the OCC or JPMorgan Chase, which I believe was -- became essentially frozen, meaning it was not returned to Lehman, but I could be incorrect.

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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2           I remember that there was some -- that</p> <p>3 the unwind of a position at -- the unwind of a</p> <p>4 transfer of a termination of a transfer at OCC</p> <p>5 was not as smooth as what it should have been.</p> <p>6       <b>Q. Looking at the balance sheet draft in</b></p> <p>7 <b>Exhibits 178 and 179, in the assets that are</b></p> <p>8 <b>included in these two spreadsheets you have not</b></p> <p>9 <b>made any provision for this OCC margin; is that</b></p> <p>10 <b>right?</b></p> <p>11       A. Again, I don't remember what -- what</p> <p>12 derivative and other contractual, I'm assuming</p> <p>13 agreements, that's typically how it would have</p> <p>14 been represented on the Lehman balance sheet, of</p> <p>15 80 million represents, but assuming that it's --</p> <p>16 assuming that this is not related to the OCC</p> <p>17 margin, I don't recall having the OCC margin</p> <p>18 being part of this opening balance, being part</p> <p>19 of this opening balance sheet.</p> <p>20       <b>Q. When is the first time you remember</b></p> <p>21 <b>having any discussions with anyone, other than</b></p> <p>22 <b>lawyers, about the OCC margin, as you understand</b></p> <p>23 <b>it?</b></p> <p>24       A. I think it must have been an informal</p> <p>25 discussion I may have had -- I don't remember --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2           Let me step back. What is your</p> <p>3 question? If you can repeat it.</p> <p>4           (Record read.)</p> <p>5       A. I don't remember who was the first</p> <p>6 person.</p> <p>7       <b>Q. The question was when, not who.</b></p> <p>8       A. I don't remember when was -- who was</p> <p>9 the first person and when did -- or when did the</p> <p>10 first discussion happen.</p> <p>11       <b>Q. And in connection with the first</b></p> <p>12 <b>discussion, do you recall, about OCC margin, did</b></p> <p>13 <b>that discussion concern adding the OCC margin as</b></p> <p>14 <b>an asset or an addition to the balance sheet for</b></p> <p>15 <b>Barclays?</b></p> <p>16       A. No, what I -- no, what I recall about</p> <p>17 the OCC margin, the first discussion was what I</p> <p>18 previously disclosed, which was the fact that</p> <p>19 it -- that it was frozen. I don't remember by</p> <p>20 whom.</p> <p>21       <b>Q. Going back to 178, and the calculation</b></p> <p>22 <b>for the inventory total, page 2 of Exhibit 178?</b></p> <p>23       A. Yes.</p> <p>24       <b>Q. The valuation information that you</b></p> <p>25 <b>would have included in this spreadsheet was as</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 <b>of what date?</b></p> <p>3       A. Again, I don't recall. There was an</p> <p>4 e-mail that you showed me earlier that would</p> <p>5 have -- that had some specific dates, which I</p> <p>6 think was -- but I don't remember when was this</p> <p>7 value being calculated.</p> <p>8       <b>Q. In your day-to-day operations for a</b></p> <p>9 <b>repo that was done on the 18th --</b></p> <p>10       A. Uh-huh.</p> <p>11       <b>Q. -- would you have calculated values as</b></p> <p>12 <b>of the 18th or some other day?</b></p> <p>13       MR. STERN: Objection to the form.</p> <p>14       A. Generally, to my -- to the best of my</p> <p>15 knowledge, in a normal repo transaction, I</p> <p>16 believe that the custodian -- actually, I don't</p> <p>17 even know it for a fact so I prefer not to say.</p> <p>18 I prefer to say that I don't recall.</p> <p>19       But I do want to repeat that we had at</p> <p>20 that point significant data issue at Lehman for</p> <p>21 a variety of reasons, but chief among them the</p> <p>22 fact that JPMorgan did not provide us with the</p> <p>23 information.</p> <p>24       (Exhibit 180, an e-mail chain, the</p> <p>25 first in time from M. Kelly to R. Azerad,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2 dated September 21, 2008, marked for</p> <p>3 identification, as of this date.)</p> <p>4       MR. STERN: What is your sense of</p> <p>5 timing in terms of lunch break?</p> <p>6       MR. TAMBE: Probably shortly after</p> <p>7 this exhibit and maybe some follow-up</p> <p>8 questions.</p> <p>9       MR. STERN: Okay.</p> <p>10       <b>Q. I handed you a three-page document</b></p> <p>11 <b>marked as Exhibit 180. Take a moment to look at</b></p> <p>12 <b>that and let me know when you're done.</b></p> <p>13       A. Sure.</p> <p>14       (Document review.)</p> <p>15       A. I've read Exhibit 180.</p> <p>16       <b>Q. And this exhibit touches on this issue</b></p> <p>17 <b>of the data valuation, right?</b></p> <p>18       A. Uh-huh.</p> <p>19       <b>Q. Right?</b></p> <p>20       A. Yes, that's correct.</p> <p>21       <b>Q. And just to make sure I'm</b></p> <p>22 <b>understanding this, is it the case that you had</b></p> <p>23 <b>valued the repo transaction for the collateral</b></p> <p>24 <b>transferred on Thursday as of Thursday closing</b></p> <p>25 <b>prices?</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 MR. STERN: Objection to the form.</p> <p>3 A. Let's hear the question again.</p> <p>4 (Record read.)</p> <p>5 A. I was not involved in the valuation.</p> <p>6 Q. But --</p> <p>7 A. What this e-mail -- this e-mail</p> <p>8 traffic says I was asking confirmation from</p> <p>9 Martin Kelly and other people about which source</p> <p>10 of prices to use to do the analysis, but I was</p> <p>11 not part of the exercise that was done to price</p> <p>12 the securities.</p> <p>13 Q. Okay. Does this, having reviewed this</p> <p>14 e-mail chain, can you confirm that the prices</p> <p>15 you in fact did use for the balance sheet that</p> <p>16 you prepared for the Thursday transfer were</p> <p>17 using Thursday prices and for the Friday</p> <p>18 transfers used the Friday prices?</p> <p>19 A. That's what Jim Hraska in the e-mail</p> <p>20 sent at 12:26 said.</p> <p>21 Q. Subsequent to receiving these e-mails,</p> <p>22 have you any reason to believe that Mr. Hraska</p> <p>23 wasn't accurate in describing the valuation?</p> <p>24 A. I don't --</p> <p>25 MR. STERN: Objection to the form.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 A. I don't recall seeing an e-mail from</p> <p>3 Jim Hraska changing what he said in the e-mail</p> <p>4 at 12:26.</p> <p>5 Q. So the answer to my question is no,</p> <p>6 you're not aware of any reason?</p> <p>7 A. I don't recall.</p> <p>8 MR. STERN: Objection to the form.</p> <p>9 Q. After you joined Barclays in September</p> <p>10 2008, were you involved with any effort to</p> <p>11 revalue the collateral that had been transferred</p> <p>12 from Lehman to Barclays?</p> <p>13 A. Yes, I --</p> <p>14 MR. STERN: If this involves work you</p> <p>15 did for counsel --</p> <p>16 THE WITNESS: Counsel.</p> <p>17 MR. STERN: Don't identify the work</p> <p>18 you did for counsel, and I'll instruct you</p> <p>19 not to answer.</p> <p>20 A. I will follow my attorney's</p> <p>21 recommendation.</p> <p>22 MR. TAMBE: And Jack, what's the basis</p> <p>23 of the objection? Is it attorney-client</p> <p>24 privilege?</p> <p>25 MR. STERN: It's work product and</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 attorney-client privilege.</p> <p>3 Q. Can you identify the lawyers who asked</p> <p>4 you to do the work in revaluing the collateral?</p> <p>5 MR. STERN: Objection. I'm going to</p> <p>6 instruct you not to answer because answering</p> <p>7 it would reveal work product.</p> <p>8 Q. And sir, could you tell me when you</p> <p>9 were asked to do this by the lawyers?</p> <p>10 MR. STERN: Objection. I'm going to</p> <p>11 instruct you not to answer.</p> <p>12 Q. And other than yourself, did other</p> <p>13 people assist with this project of revaluing the</p> <p>14 collateral?</p> <p>15 MR. STERN: I instruct you not to</p> <p>16 answer.</p> <p>17 MR. TAMBE: What basis?</p> <p>18 MR. STERN: I'm not going to allow the</p> <p>19 witness --</p> <p>20 MR. TAMBE: Just state the basis. I</p> <p>21 don't need a speech. Just state the basis.</p> <p>22 State it for the record.</p> <p>23 MR. STERN: Work product and</p> <p>24 attorney-client privilege.</p> <p>25 MR. TAMBE: Let's take a lunch break</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 now.</p> <p>3 (Luncheon Recess; Time Noted: 12:39</p> <p>4 P.M.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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AFTERNOON SESSION  
(Time Noted: 1:32 P.M.)

ROBERT AZERAD, resumed and  
testified further as follows:

EXAMINATION BY (Cont'd.)

MR. TAMBE:

**Q. Good afternoon, Mr. Azerad.**

A. Good afternoon.

**Q. I wanted to revisit one of the documents we've been talking about this morning which was marked as Exhibit 175, I believe.**

A. Are you talking about this document?

**Q. Yes, this is the multi-page document that had not been assembled properly. We have assembled it in Bates order now. I want to ask you a couple of questions about it.**

**First, if you could take a moment to look at the cover e-mail and the attached spreadsheets.**

A. Okay, it's a multi-page attached spreadsheet. Is it okay if I just have a cursory look at the attached spreadsheet, assuming that most of your questions will be focused on the beginning, your first three

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pages?

**Q. That's a fair assumption, but I might ask you about particular columns, so why don't you take a cursory look at the spreadsheet. Let me know when you're done.**

(Document review.)

A. I've read the e-mail.

**Q. Turning your attention to this e-mail and the exhibits, are you generally familiar with this document?**

A. I don't recall seeing it at that time, but clearly the e-mail sent at 4:46 on Friday morning was sent to me, among other people.

**Q. Okay. And you were working at the office overnight Thursday night into Friday morning the week of the bankruptcy, right?**

A. That particular night, the night of the -- between the 18th and the 19th, I was in the office.

**Q. And I think you described in the morning session that among the various things you were doing was identifying assets available for transfer to Barclays, correct?**

A. That could be transferred to Barclays.

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**Q. That could be transferred to Barclays.**

**And as you did a cursory review of the spreadsheet, did you see that the various assets that are identified in this spreadsheet have a column "Available for Transfer," do you see that?**

A. Yes, I see that. Column F, I believe.

**Q. And is it your understanding that the document at page 3 of this exhibit, Bates number ending in 4635 --**

A. Uh-huh.

**Q. -- that is a summary or roll-up of the information contained in the subsequent spreadsheets?**

A. I don't recall the document, so what I -- to be able to answer your question, I would need to look at the document in Excel spreadsheet and actually do some validation of the column, do a validation of a summary.

**Q. But generally, having seen this document, do you recall having been involved in the preparation of a spreadsheet that identified the Cusips and the amounts available to be transferred to Barclays in that time period,**

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**18th or 19th of September?**

A. There were many efforts going on, some of them being led by my team, some of them being led by Operations, and some of them also being led by Product Control to try to understand what could be transferred to Barclays. I believe that the spreadsheet was sent by Chris Mincak to Gerry Reilly, so this is a part of stream of effort coming from Product Control.

**Q. There's various listings of Cusips also contained in column D, which is titled "Balance Sheet"?**

A. Yes.

**Q. Do you see that?**

A. Uh-huh.

**Q. Do you have an understanding --**

MR. STERN: I'm sorry, column D?

MR. TAMBE: D, yeah.

MR. STERN: D, as in dog?

MR. TAMBE: Dog.

MR. STERN: Oh, I see. You're not referring to the third page, you're referring to the fourth page.

MR. TAMBE: Yes, fourth page onward,

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2 the various spreadsheets which have the  
3 listing of particular securities.

4 MR. STERN: Okay. Fine.

5 A. Yes.

6 Q. What is your understanding of the  
7 information that's contained in that column, the  
8 "Balance Sheet" column?

9 A. Again, I was not involved in the  
10 creation of that spreadsheet, so I cannot  
11 comment with confidence on what that column  
12 means, meaning it appears to me, looking at this  
13 document now, that this refers to balance sheet  
14 numbers.

15 Q. Would that be market value numbers for  
16 these securities?

17 A. Typically balance sheet numbers refer  
18 to market values.

19 Q. And looking at the spreadsheet in  
20 Exhibit 175, does it identify the source of the  
21 price information that appears in the balance  
22 sheet column?

23 A. I don't remember when I looked, but  
24 again, I had a cursory look at the spreadsheet,  
25 so I may have missed it, but I don't remember

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2 seeing the source of information.

3 Q. If you could also turn your  
4 attention -- you can set that one aside. If you  
5 can turn your attention back to 151A that we  
6 discussed this morning.

7 A. Yes.

8 Q. This was an e-mail concerning the  
9 preparation of the opening balance sheet. Do  
10 you remember?

11 A. I remember.

12 Q. In your e-mail dated September 20 at  
13 10:27, you had an item concerning 1.9 billion of  
14 collateral. Do you see that?

15 A. Yes. That's item number 2?

16 Q. Item number 2 in that e-mail, right.  
17 If you could put before you Exhibit 178 and 179  
18 that we discussed this morning.

19 A. It's not a problem. Let me try to  
20 find them.

21 Q. Do you have them? Looking at the  
22 attachment to 178, it's a two-page exhibit?

23 A. Uh-huh. Yes.

24 Q. There is a draft balance sheet  
25 attached?

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2 A. Yes.

3 Q. The \$1.9 billion component in the  
4 e-mail which is Exhibit 151A?

5 A. Yes.

6 Q. Where is that -- well, let me ask you,  
7 is that included in the valuation of assets that  
8 you have on page 2 of Exhibit 178?

9 MR. STERN: Objection to the form.

10 A. Complicated here. Let me just --  
11 I'm sorry, can you repeat the  
12 question?

13 (Record read.)

14 A. Let me understand.

15 MR. STERN: Objection to the form.

16 A. It's -- it's hard for me to tell. The  
17 1.9 billion of Exhibit 151A was sent to me as  
18 of -- was sent by me, sorry, as of 10:27. I'm  
19 assuming all these are based on New York time,  
20 not GMT, in New York time. And the 178, the  
21 exhibit in 178 was sent to me at 8:39 P.M. on  
22 the Saturday.

23 What I was trying to explain this  
24 morning is, starting on September 19, the  
25 Friday, there was a fair amount of uncertainty

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2 about the information that Lehman had access to  
3 as it relates to the inventory of LBI -- or,  
4 securities held by LBI, I should say, and so all  
5 the analysis we did was done on the best effort  
6 basis.

7 It could be that, in between these two  
8 e-mails, there were some additional refinement I  
9 received in terms of the data, which means that  
10 the 1.9 billion that I referred to as of 10:27  
11 may or may not become some other numbers as of  
12 8:39 P.M. that day.

13 Q. Let's try it another way. Looking at  
14 Exhibit 178, which has the balance sheet, if you  
15 turn to page 2?

16 A. Uh-huh. Yes.

17 Q. And looking at the listing of assets  
18 that are included in that balance sheet, do you  
19 know whether those include items which would  
20 have been in the non-actionable box?

21 A. This is where I have an issue about  
22 answering accurately to your question. I  
23 mentioned earlier that, I think in one of my  
24 previous answers in one of your previous  
25 questions this afternoon, that there were, to

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the best of my recollection, three streams of work being done to ascertain the assets that could be transferred to Barclays. There was one by Product Control, there was one by Treasury, and one by Operations.

One led by Treasury, the effort led by Treasury essentially fizzled because we didn't have good information. We eventually, I don't know when exactly the decision was made, we relied on the file provided by Operations, I believe Jim Hraska or someone working for Jim Hraska.

My vague recollection is that the amounts were about the same, may have been slightly different, but I think that they were roughly kind of roughly in the same ballpark, and so when you ask me the question of is the 1. -- is there a 1.9 and does it refer to the same 1.9 that you refer to in Exhibit 151A, I have trouble answering the question.

**Q. Okay. Were you aware of any discussions in connection with preparation of Exhibit 178A about --**

**A. You mean 178?**

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**Q. 178. Let me start again.**

**Were you aware of any discussions in connection with the preparation of Exhibit 178 about including or excluding the non-actionable box from the calculation of assets?**

**A. My understanding and my recollection, I should say, is that the non-actionable box, which again refers to the ability in a normal market environment to finance assets in a secured basis, that's what it means by non-actionable, was not a determining factor on whether or not assets in that box could or could not be transferred to Barclays.**

**Q. Were the items in that box included in the assets that are set forth in Exhibit 178A -- 178?**

**A. Again --**

MR. STERN: Why don't you take your time and read 178 and think about the question.

**A. I mean, if I look at Exhibit 178 and the e-mail from Brett Beldner to Martin Kelly, item number 1 in that e-mail talks about 2 billion of assets that may be -- that may not --**

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that may be locked up. In between parentheses it says "can be transferred."

That seems to indicate, again, reading this e-mail today, that we're still talking about the same 1.9 billion that I referred to as of Exhibit 151A, because at that point we knew that the quality of the work that was done by Treasury -- we knew that the work that was being done by Treasury to look -- to create the list of assets that could be transferred to Barclays was relying on information that may or may not be correct. That's because at that point we didn't have, I believe, good information in GFS, which was the source of information for Treasury.

But it looks as if, based on the e-mail from Brett Beldner in paragraph 1, that we're still talking about the same 1.9 billion. So if this is correct, then to go back to your earlier question, then, yes, 1.9 referred to in 151A, based on my interpretation in Brett's e-mail, would have been included in the spreadsheet found on page 2 of Exhibit 178.

**Q. And in the answer you just gave you**

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**discussed the quality of the GFS information?**

**A. That's correct.**

**Q. What were the problems you were having with the GFS information that weekend?**

**A. The primary issue from a Treasury standpoint is that we had not ascertained which securities were kept by JPMorgan and which securities were being allocated to Barclays, and there were also, besides Barclays, there were also I believe two or three repo counterparts which also were funding LBI as of Friday night.**

I don't remember, I believe one of them was BGI, Barclays Global Investors, but that was separate from the transaction that we had with Barclays. That was a long-standing repo transaction. One of them was Dresdner Bank and I don't remember the name of the third repo counterpart.

So because we didn't have the, what we call the allocation file from JPMorgan, it was difficult for us in Treasury to understand what assets were -- could be transferred to Barclays. What was -- what happened is Operations, which was looking at actual depot position, was able

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2 to kind of provide a better picture of the  
3 assets that were left unencumbered and,  
4 therefore, could be transferred to Barclays.  
5 Q. I just want to better understand these  
6 different sources of information. The Treasury  
7 work stream looked to the GFS information as the  
8 reasons you just stated, found it to be not  
9 complete or reliable for its purposes that  
10 weekend, correct?  
11 A. That's correct.  
12 Q. And I think you said ultimately the  
13 work stream that provided the data that was  
14 relied on was the Ops, Operations Work Team; is  
15 that correct?  
16 A. That's correct.  
17 Q. You said they had visibility of what  
18 was in the depot, is that right?  
19 A. That is correct.  
20 Q. What do you mean by that? What  
21 information were they seeing that was not being  
22 captured by GFS?  
23 A. Well, the way that -- let me try to  
24 be -- what they had access to was actual  
25 position held by depot -- what Operations had  
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2 who told me that there was issue with the GFS  
3 information.  
4 Q. And did the people that told you there  
5 was problems with the GFS information tell you  
6 what other data should be used, for example, the  
7 Ops data stream?  
8 A. No, that's not the way I believe that  
9 it -- I don't believe this is how it happened.  
10 I think that they were -- I don't know when  
11 operations started its effort, but product  
12 control and Treasury I think worked side-by-side  
13 almost as a dual track project.  
14 I don't know when Operations kind of  
15 started its own effort, but what I do know is  
16 that, at the end, the data, the source data for  
17 the information came from Operations. So,  
18 therefore, the analysis, I'm sorry, came from  
19 Operations.  
20 Q. In describing the problem at GFS, I  
21 think you described a problem with identifying  
22 particular securities, identifying specific  
23 Cusips, was that part of the problem?  
24 A. Yeah. Let me give you an example, for  
25 instance. I think in one of the previous  
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2 access to was actual information provided by  
3 depot, such as DTC being one of them, being  
4 probably the primary of them, but there were  
5 other depot as well that LBI had in the U.S. and  
6 outside the U.S.  
7 There were typically -- I don't  
8 believe, again, I'm not an expert in GFS, how --  
9 why this information was not fed in GFS on the  
10 kind of day-to-day basis, but the information  
11 from GFS, as it was explained to me that week  
12 and that weekend, was dependent on getting  
13 information from JPMorgan Chase on what -- on  
14 which securities they were -- they allocated and  
15 which securities were left at the Lehman account  
16 at JPMorgan Chase.  
17 Q. And again --  
18 A. Now, depot --  
19 MR. STERN: Wait for a question.  
20 Q. Have you finished your answer?  
21 A. No. No. Please, continue.  
22 Q. Was there someone at Lehman who told  
23 you that weekend that there were problems with  
24 the GFS information?  
25 A. I'm sure I heard it. I don't remember  
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2 exhibits that you showed me this morning there  
3 were a series of repo transactions between LBI  
4 and LBIE, and I believe that GFS was still  
5 showing this transaction as still being  
6 outstanding even though our assessment at that  
7 time, and I don't know, at least assessment of  
8 Treasury, not necessarily senior management or  
9 legal assessment, but the assessment of Treasury  
10 is that these repos had failed, meaning LBI in  
11 their return of cash back to LBI, they were  
12 never going to be settled in a normal way, but I  
13 believe that GFS still had this information as  
14 if they were still outstanding and still ready  
15 to be settled. That would be one of the issues  
16 that we had with GFS.  
17 Q. Did you also have an issue with GFS  
18 about the valuation in the GFS system for a  
19 particular security?  
20 A. Treasury was never -- was never  
21 involved in the valuation of the assets. We  
22 rely on either GFS or other source of data as  
23 directed to value the securities. I think that  
24 you showed me this morning an exhibit that  
25 the -- with some e-mail between myself and I  
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<p>1       <b>HIGHLY CONFIDENTIAL - R. AZERAD</b> 2 think either Paolo Tonucci or Martin Kelly where 3 I was asking which source of data -- which 4 source of pricing I should be using. 5       <b>Q. Now, the third work stream that you</b> 6 <b>described, you talked about Treasury, talked</b> 7 <b>about Operations and the third was PCG, correct,</b> 8 <b>Product Control Group?</b> 9       A. That's exhibit -- whatever was the big 10 exhibit that you showed me at the beginning. 11 175, I believe. I'm not sure, but it's -- it 12 came from Product Control. 13       <b>Q. 175 did?</b> 14       A. Yes. 15       <b>Q. And how do you know that?</b> 16       A. Because I know Chris Mincak and I know 17 Gerry Reilly. 18       <b>Q. And they were with Product Control?</b> 19       A. They were in Product Control. 20       <b>Q. Would the pricing information that</b> 21 <b>feeds into GFS come from the Product Control</b> 22 <b>Group?</b> 23       A. I'm not an expert. I'm not familiar 24 enough with the valuation process at Lehman to 25 be able to answer your question. Product TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - R. AZERAD</b> 2 Control was involved. I don't know whether -- I 3 don't know which other parties would have been 4 involved in the valuation process. 5       <b>Q. The information that Operations had</b> 6 <b>access to, the actual positions held by DTC and</b> 7 <b>other custodians?</b> 8       A. Yes. 9       <b>Q. Did that information also carry with</b> 10 <b>it valuation information?</b> 11       A. I can't answer your question. I 12 haven't seen the source -- I haven't seen the 13 source document from DTC so I don't remember 14 whether or not the valuation came from DTC or 15 came from Lehman. What we were using -- the 16 value of information from Treasury's standpoint 17 from DTC was knowing which Cusip and the 18 quantity of the Cusip. I don't remember the 19 valuation where it came from. 20       <b>Q. Is it possible that you used the DTC</b> 21 <b>information for identifying the Cusip and the</b> 22 <b>quantity, but obtained pricing of value</b> 23 <b>information from another source?</b> 24       MR. STERN: Objection to the form. 25       A. It was an e-mail that you showed me TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - R. AZERAD</b> 2 this morning which I think said that that was 3 obtained, the pricing information at least from 4 one of the file, from Operations. I don't 5 remember what -- which source of information 6 Operations used. 7       <b>Q. At any time during the weekend of</b> 8 <b>September 20th, 21st or thereafter, did you</b> 9 <b>prepare a valuation using pricing information</b> 10 <b>from the Bank of New York?</b> 11       MR. STERN: Objection to the form. 12       A. Sorry, can you repeat the question? 13 (Record read.) 14       A. What do you mean by "valuation"? 15       <b>Q. Did you ever calculate a value of the</b> 16 <b>assets transferred from Lehman to Barclays using</b> 17 <b>Bank of New York prices?</b> 18       MR. STERN: Objection to the form. 19       A. Again, I was not involved in the 20 valuation process at Lehman. What I -- what I 21 recall was, as part of another stream of work I 22 was involved with, was trying to understand the 23 assets being transferred -- the assets which had 24 been transferred from Lehman to Barclays, we 25 received I think it was one of your e-mail TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - R. AZERAD</b> 2 exhibits from this morning a file from Barclays. 3 I don't know which source of which pricing 4 information that file had, but there may have 5 been comparison between Cusip and prices between 6 Lehman and -- between Lehman and Barclays, but 7 not valuation per se, just comparison of 8 numbers. 9       <b>Q. Look at Exhibit 147A and also have</b> 10 <b>before you Exhibit 178. If you look at the</b> 11 <b>second page of Exhibit 147A, that's the e-mail</b> 12 <b>from Jasen to you and others, do you see that?</b> 13       A. Yes. 14       <b>Q. There's a reference in that e-mail to</b> 15 <b>a BONY market value, B-O-N-Y market value, of</b> 16 <b>approximately it says 45 million, do you see</b> 17 <b>that?</b> 18       A. Yes. 19       <b>Q. Do you understand that at least in</b> 20 <b>this e-mail to be a reference to 45 billion?</b> 21       A. That would be my understanding, yes. 22       <b>Q. So, taking that as a reference to BONY</b> 23 <b>market value of approximately 45 billion, if you</b> 24 <b>now turn to Exhibit 178, there that draft</b> 25 <b>balance sheet, opening balance sheet, shows</b> TSG Reporting - Worldwide (877) 702-9580</p>

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**total cash and inventory of what, 51.8 billion?**

MR. STERN: I'm sorry, what are you looking at?

A. I'm sorry, I don't see 51.8.

**Q. I'm adding two numbers. I'm adding the cash and the 44.8 billion.**

A. Oh, okay, but you don't include the receivables.

**Q. I'm not including the receivables, no.**

A. Then, yes, it should be 51.8.

**Q. Okay. Did you ever hear about a \$6 billion discrepancy between the BONY valuation and any valuations that you had been using for calculating the value of assets transferred from Lehman to Barclays?**

MR. STERN: Objection to the form.

A. I don't recall hearing about the 6 billion.

**Q. Have you heard of any significant pricing discrepancies between the BONY pricing for the Lehman assets transferred to Barclays and the values that were used by Lehman in transferring those assets to Barclays?**

A. I'm sorry, can you repeat the

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**question?**

(Record read.)

A. What do you mean by "significant"?

**Q. Well, anything above a billion dollars.**

A. That there were pricing differences probably, yes. I don't remember the amount of the pricing differences.

**Q. If there had been a pricing discrepancy of say 10 percent of the value of the assets, is that something that would have caught your attention?**

MR. STERN: Objection to the form.

A. The charge for us and I believe, from my recollection, is we did not -- that there was disagreement between us and Barclays about the actual securities transferred, so we had -- we thought we had transferred some securities which Barclays claimed never to have received and vice-versa, and so when you talk about valuation in general, it's hard for me to answer this question.

**Q. The disagreements that you recall between Lehman and Barclays over the securities**  
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**transferred, was the magnitude of that disagreement in the several billion dollars?**

MR. STERN: Objection to the form.

A. I don't remember the exact amount. I know that we had been in -- I had -- I know that I had exchanged e-mails with Operations and with Barclays trying to create kind of a -- create a list of assets that had been transferred between Lehman and Barclays, and I do remember that it was a very difficult exercise.

**Q. Was the process that you talked about earlier, the process on September 19th of identifying additional assets to transfer to Barclays, part of this disagreement?**

MR. STERN: Objection to the form.

A. No. What I said and what I continue saying is not to transfer, but could be transferred to Barclays. I was not -- I was not part of the negotiation between Lehman and Barclays, so I don't know which assets had been discussed as part of the transfer.

**Q. Was identifying the assets to be transferred to Barclays, whether or not they were actually transferred, identifying the**

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**assets that could be transferred to Barclays on September 19, was that because Barclays believed it had not received enough value in the assets that were transferred from Lehman to Barclays?**

MR. STERN: Objection to the form.

A. I don't know. That is a question I think which is best asked with Barclays. I was just asked to continue working on the list of assets that could be transferred to Barclays.

**Q. Do you recall hearing from anyone on Friday, September 19, that Barclays was asking for additional assets and collateral because they thought they hadn't gotten enough?**

A. I don't recall precisely. I -- I recall that on the -- that during that night, the night between the 18th and the 19th, Barclays had to deposit cash, I believe 7 billion, which is based on this balance sheet, at JPMorgan Chase, which would seem to indicate that they were expecting more securities to be transferred.

MR. STERN: Could you repeat the question, please?  
(Record read.)

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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       A.   What I do recall, and again, not --</p> <p>3           MR. STERN: The question asks if you</p> <p>4       recall anyone telling you that.</p> <p>5       A.   I don't --</p> <p>6       <b>Q.   Answer the question.</b></p> <p>7       A.   I don't recall specifically someone</p> <p>8       telling me that.</p> <p>9       <b>Q.   Were you ever given a target amount of</b></p> <p>10      <b>assets to identify on September 19 as additional</b></p> <p>11      <b>assets or collateral to be made available for</b></p> <p>12      <b>transfer to Barclays?</b></p> <p>13      A.   Not to the best of my recollection. I</p> <p>14      think that we were trying to come up with a list</p> <p>15      of assets that could be transferred to Barclays,</p> <p>16      but I don't recall hearing about a target.</p> <p>17      <b>Q.   So you just had to keep looking for</b></p> <p>18      <b>assets until there were no more defined?</b></p> <p>19      MR. STERN: Objection to the form.</p> <p>20      <b>Q.   Was that your instruction?</b></p> <p>21      A.   Well, it was -- you made it sound as</p> <p>22      if every asset that were identified was going to</p> <p>23      be transferred to Barclays. That I don't know</p> <p>24      and I don't know now and I didn't know at the</p> <p>25      time. My job was more narrowly focused on just</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       trying to understand which assets could be</p> <p>3       transferred to Barclays.</p> <p>4       <b>Q.   And there was no dollar amount that</b></p> <p>5       <b>you were provided as to when you could stop</b></p> <p>6       <b>trying to identify additional assets, correct?</b></p> <p>7       <b>You had to just keep identifying as many assets</b></p> <p>8       <b>as you could that could be transferred to</b></p> <p>9       <b>Barclays?</b></p> <p>10      MR. STERN: Objection to the form.</p> <p>11      A.   I mean, they --</p> <p>12      I'm sorry, can you repeat the</p> <p>13      question?</p> <p>14      (Record read.)</p> <p>15      A.   Yes, although what's -- that's not the</p> <p>16      way that I -- that's not the way that I, going</p> <p>17      back to that week, it's not the way that I felt</p> <p>18      about it. What happened is that we had a series</p> <p>19      of assets left at Chase and so we had -- the</p> <p>20      purpose of a lot of this exercise was trying to</p> <p>21      find assets outside of Chase that could be</p> <p>22      transferred to Barclays.</p> <p>23      <b>Q.   And as part of that exercise of trying</b></p> <p>24      <b>to find these assets outside of Chase, there was</b></p> <p>25      <b>no limit set on a number that you were shooting</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       <b>for, is that your testimony?</b></p> <p>3       A.   There was no -- I don't recall hearing</p> <p>4       about a limit.</p> <p>5       <b>Q.   Sir, I've handed you a one-page</b></p> <p>6       <b>document marked Exhibit 164A. Take a moment to</b></p> <p>7       <b>look at it. Let me know when you're done.</b></p> <p>8       (Document review.)</p> <p>9       A.   I'm done.</p> <p>10      <b>Q.   Have you seen this document before</b></p> <p>11      <b>today?</b></p> <p>12      A.   I don't recall, but you show it no me</p> <p>13      and clearly I am on some of -- I am both on the</p> <p>14      "to" and on the "from" line, so I must have seen</p> <p>15      the document at that time.</p> <p>16      <b>Q.   The document concerns a discussion,</b></p> <p>17      <b>the subject line says "Box Summary versus Spero</b></p> <p>18      <b>Report," do you see that?</b></p> <p>19      A.   Yes.</p> <p>20      <b>Q.   Does the term "box summary" have any</b></p> <p>21      <b>meaning to you?</b></p> <p>22      A.   "Box" is a term which is very loosely</p> <p>23      used. It has -- it has multiple meanings, and</p> <p>24      in that particular context, I don't remember</p> <p>25      what "box summary" means.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2       <b>Q.   How about the phrase "Spero report,"</b></p> <p>3       <b>does that have any meaning to you?</b></p> <p>4       A.   Spero was an employee of Lehman</p> <p>5       Brothers, and I don't recall what the Spero</p> <p>6       report means.</p> <p>7       <b>Q.   And then there's a calculation set out</b></p> <p>8       <b>at the bottom of that e-mail chain from John</b></p> <p>9       <b>Vergel de Dios to you and Henry Domenici?</b></p> <p>10      A.   Yes.</p> <p>11      <b>Q.   Do you understand the information</b></p> <p>12      <b>contained in that e-mail?</b></p> <p>13      A.   I'm afraid I don't recall what it</p> <p>14      means. The numbers -- I'm not sure what it</p> <p>15      means.</p> <p>16      <b>Q.   You respond to that e-mail by</b></p> <p>17      <b>forwarding it to Paolo Tonucci and you state,</b></p> <p>18      <b>"FYI - 3.52 billion of risk. I'm</b></p> <p>19      <b>double-checking the numbers." Do you see that?</b></p> <p>20      A.   Yes.</p> <p>21      <b>Q.   Do you have any understanding as you</b></p> <p>22      <b>sit here about what you meant by that?</b></p> <p>23      A.   I'm afraid not.</p> <p>24      MR. STERN: At some point if we could</p> <p>25      take a really short break, whenever it's</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

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got secured financings against those assets, correct?

MR. STERN: Objection to the form.

A. I'm not sure. Some of these assets may have been -- may have been pledged. Some may not have been. I don't know which one -- which ones were pledged, which ones were not pledged to secure secured -- to get secured financing.

**Q. If you go back to 86B and 87B, looking at 86B first, which is the three-page document, on page 1 there's a column F titled "PCG Liquidity Value"?**

A. Yes.

**Q. Do you have any understanding of what that term "PCG liquidity value" means?**

A. No, I don't.

**Q. Is that a term that you use in your day-to-day business?**

A. No, it's not a term that we use.

**Q. On Exhibit 87B --**

A. Yes.

**Q. -- there's a column F titled "MV w Liquidity." Do you see that?**

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A. Yes.

**Q. Is that a phrase you're familiar with?**

A. No, it's not.

**Q. Not a phrase that you use in your day-to-day business, correct?**

A. That's correct.

MR. TAMBE: I want to take a short break. I think I'm almost done with my line of questioning. Let me check.

(Recess; Time Noted: 2:58 P.M.)

(Time Noted: 3:04 P.M.)

BY MR. TAMBE:

**Q. Just a couple of questions, Mr. Azerad. Stephen King, was Mr. Stephen King at Barclays? Is that a name you're familiar with?**

A. The name is familiar. He was involved in the transfer -- in the transfer of assets. I believe he works in the group at Barclays called PMTG.

**Q. Do you know what "PMTG" stands for?**

A. I don't know.

**Q. In late September were you involved in the preparation of Schedules A and B to the Asset Purchase Agreement?**

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A. I was involved.

**Q. Will you describe that process, the preparation of Schedules A and B?**

A. To the best of my recollection, Schedule A referred to the asset transfers on Thursday night and Schedule B was part of the exercise of trying to identify assets that could be transferred to Barclays.

**Q. And that's the process that you had talked about earlier in your deposition about having taken place in September 19 and later; is that right?**

A. That is correct.

**Q. And what's listed in Schedule B then is a listing of the assets that actually were transferred or to be transferred to Barclays pursuant to that process?**

MR. STERN: Objection to the form.

A. I'm sorry, can you repeated the question?

(Record read.)

A. No, that's -- that's not what I said. I said that the exercise that we did for Schedule B was a list of assets that could be

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transferred to Barclays.

**Q. Were any of the assets on Schedule B actually transferred to Barclays?**

A. I don't know. The work that Treasury did on Schedule B, as I mentioned in one of my previous answers, didn't generate good results and so we switched to the list provided by Operations. To the best of my knowledge, we never tried to reconcile the two lists, so it may well be, I don't know.

**Q. Do you have any understanding of any Schedules A and B being filed with the court?**

A. As I mentioned earlier, I haven't seen the -- in September, I hadn't seen the Asset Purchase Agreement.

**Q. As you sit here today, are you aware of Schedules A and B having been filed with the court?**

A. I'm not aware of it.

**Q. As you sit here today, are you aware of a Schedule B that definitively lists the assets that actually were transferred to Barclays?**

A. I'm not aware of it.

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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2           MR. TAMBE: Subject to production of</p> <p>3 documents and rulings of the court and</p> <p>4 privilege invocations that have been made</p> <p>5 today, I want to pass the witness to the</p> <p>6 other counsel.</p> <p>7 EXAMINATION BY</p> <p>8 MR. ROTHMAN:</p> <p>9           Q. Good afternoon, Mr. Azerad. My name</p> <p>10 is Seth Rothman. I represent the Trustee.</p> <p>11           A. Good afternoon.</p> <p>12           Q. I'd like to start by marking as the</p> <p>13 next exhibit an e-mail string. The top e-mail</p> <p>14 is -- doesn't involve you. It's from Mr.</p> <p>15 Tonucci to Mr. Blackwell. You'll see the first</p> <p>16 e-mail in the string is from Mr. Tonucci to you</p> <p>17 and others.</p> <p>18           (Exhibit 182, an e-mail chain, the</p> <p>19 earliest in time from P. Tonucci to R.</p> <p>20 Azerad and others, dated September 20, 2008,</p> <p>21 marked for identification, as of this date.)</p> <p>22           Q. Why don't you take a minute to review</p> <p>23 that. I'm only going to ask you about the</p> <p>24 bottom-most e-mail on the page.</p> <p>25           (Document review.)</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2           A. I'm ready.</p> <p>3           Q. Do you recall receiving this e-mail</p> <p>4 from Mr. Tonucci?</p> <p>5           A. I don't recall, but I was clearly</p> <p>6 listed as one of the recipients.</p> <p>7           Q. Okay. The e-mail is -- the subject</p> <p>8 line is "Non-actionable box," correct?</p> <p>9           A. Yes.</p> <p>10           Q. First line he writes, "We need to go</p> <p>11 through where all of this is. Some may be in</p> <p>12 the DTC box which may be mixed up with the</p> <p>13 tri-party pledge on Thursday."</p> <p>14           That's what the Mr. Tonucci wrote in</p> <p>15 his e-mail, correct?</p> <p>16           A. Yes.</p> <p>17           Q. Do you know what he meant by the "DTC</p> <p>18 box"?</p> <p>19           A. Not specifically.</p> <p>20           Q. Is that a phrase with which you are</p> <p>21 familiar, "DTC box"?</p> <p>22           A. It's a phrase with which I'm familiar,</p> <p>23 or at least I've used in the past. Lehman had</p> <p>24 more than one DTC boxes, and by "Lehman," I</p> <p>25 meant LBI.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2           Q. When you say -- you said before, I</p> <p>3 think, that the word "box" has different</p> <p>4 meanings depending on context. When you say</p> <p>5 that LBI had different boxes of DTC, how are you</p> <p>6 using that term "box"?</p> <p>7           A. As a synonym for accounts.</p> <p>8           Q. So one of the accounts at the DTC</p> <p>9 would be the O74 account; is that correct?</p> <p>10           A. That's how it was referred to within</p> <p>11 Lehman.</p> <p>12           Q. And when you talk about the</p> <p>13 non-actionable box, and I know you explained</p> <p>14 this already today, but in that context, you're</p> <p>15 not referring to the non-actionable box as an</p> <p>16 account, are you?</p> <p>17           A. No, that would have a different</p> <p>18 definition. By in the context of non-actionable</p> <p>19 box, "box" is meant to be synonym with a</p> <p>20 portfolio or a list of unencumbered securities.</p> <p>21           Q. So let me just see if I understand</p> <p>22 whether there's a relationship between the DTC</p> <p>23 account and the non-actionable box.</p> <p>24           Is it the case that there may be</p> <p>25 securities in the DTC box that are also counted</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           <b>HIGHLY CONFIDENTIAL - R. AZERAD</b></p> <p>2 toward the portfolio that would represent the</p> <p>3 non-actionable box?</p> <p>4           A. It may -- it very well may be.</p> <p>5           Q. And there may also be securities in</p> <p>6 the DTC boxes that would not be within the</p> <p>7 non-actionable box, is that also true?</p> <p>8           A. It may very well be.</p> <p>9           Q. And what distinguishes between the</p> <p>10 securities that are in the non-actionable box</p> <p>11 and the ones that aren't? Is it that they're</p> <p>12 not encumbered and can be pledged?</p> <p>13           A. No, the non-actionable box is a Lehman</p> <p>14 expression which refers back to the Lehman</p> <p>15 funding framework and it refers to a set of</p> <p>16 securities which Lehman on a -- was funded on an</p> <p>17 unsecured basis. Therefore, they would have</p> <p>18 been left unencumbered.</p> <p>19           Q. If we can return to Exhibit 182. Mr.</p> <p>20 Tonucci again in his e-mail says, "We need to go</p> <p>21 through where all of this is." Did you</p> <p>22 understand him to be referring to the</p> <p>23 non-actionable box when he said that?</p> <p>24           A. That's my understanding today. I</p> <p>25 don't remember how on September 20th, when</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

**HIGHLY CONFIDENTIAL - R. AZERAD**  
have identified another 300 million of mortgages in 636." Is that another box at the DTC?

A. That's another account at the DTC.

**Q. That's all I have for that e-mail. Thank you.**

We saw, sir, on a draft balance sheet that we looked at before that you had listed a \$1 billion receivable from the 15c3 lockup?

A. That's correct.

**Q. Remember that?**

A. Yes, I do remember that.

**Q. Where did that \$1 billion figure come from, do you recall?**

A. I don't recall precisely.

**Q. Was that a product of a 15c3 computation that was done at or around this time?**

A. I don't recall precisely. I mean, we -- I recall that LBI did several calculations of a 15c3-3 that week, the week of September 15th.

**Q. I'm going to mark as Exhibit 185 an e-mail from you to Martin Kelly dated Sunday, 9/21/2008, and it has an attachment to it.**

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**HIGHLY CONFIDENTIAL - R. AZERAD**  
(Exhibit 185, an e-mail from R. Azerad to M. Kelly dated September 21, 2008, with attachment, marked for identification, as of this date.)

(Document review.)

A. I've read the attachment.

**Q. Do you recognize it?**

A. Yes, I do.

**Q. Can you tell me what it is?**

A. It was, as of September 21, which is a Sunday, an analysis, a high-level analysis of the 15c3 lockup on specifically the cushion, which in a what I would call the perfect unwind scenario should return to LBI.

**Q. Did you prepare the three-page attachment?**

A. I believe I -- I believe that I wrote the three-page attachment. Clearly other people helped me prepare it.

**Q. Who helped you prepare it?**

A. Tony Stucchio's group. Tony, Anthony Stucchio, as I mentioned in one of the earlier questions, was the head of the Regulatory Reporting Group at Lehman and his group was

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**HIGHLY CONFIDENTIAL - R. AZERAD**  
involved in the calculation, in fact, was responsible for the calculation of the 15c3-3 formula.

**Q. So he is providing you with the numbers for this presentation; is that right?**

A. That is correct.

**Q. And you are responsible for the text?**

A. I may have had also other -- advised some other people. Legal may have helped, because, reading the text, there's clearly some legal claims being made and I don't pretend to be a lawyer in any sense of the word.

**Q. Is there a reason why you prepared this attachment?**

A. To the best of my recollection, this attachment must have been used as part of a justification and part of the backup for the 1 billion claim which was on the opening balance sheet which was mentioned earlier.

**Q. The attachment is a PowerPoint presentation, correct?**

A. This is a -- I believe it is a PowerPoint presentation, yes.

**Q. Were you asked to give a presentation**

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**HIGHLY CONFIDENTIAL - R. AZERAD**  
to somebody about the 15c3 lockup?

A. I don't recall how this presentation was being used after I sent to Martin Kelly.

**Q. Did Mr. Kelly ask you to prepare this?**

A. I don't recall.

**Q. You don't recall the purpose of this presentation beyond what you've already told me?**

A. That is the best of my recollection.

**Q. Do you recall if this was meant to be presented to Barclays or sent to Barclays?**

A. I don't recall.

**Q. I know you've told us this already, but what was Mr. Kelly's position at Lehman?**

A. He was the Global Head of Financial Control.

**Q. Do you know if he was familiar with 15c3?**

A. Anthony Stucchio reported to him. I don't recall, directly or indirectly, but that was -- he was -- this was part of his responsibility.

**Q. You told me before this is a top line presentation, correct?**

A. That is correct.

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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2   within Lehman, that's correct.</p> <p>3     <b>Q. If you look under the ADP --</b></p> <p>4     A. Yes.</p> <p>5     <b>Q. -- column, there's an entry marked</b></p> <p>6     <b>"Other"?</b></p> <p>7     A. Yes.</p> <p>8     <b>Q. And then it has pending adjustments in</b></p> <p>9     <b>parentheses of 3.9 billion, do you see that?</b></p> <p>10    A. I see that.</p> <p>11    <b>Q. Do you know what that is?</b></p> <p>12    A. I don't recall.</p> <p>13    <b>Q. Okay. I'm going to mark as Exhibit</b></p> <p>14    <b>189 an e-mail string. The top e-mail is from</b></p> <p>15    <b>Mark Lee to Martin Kelly. I don't think you're</b></p> <p>16    <b>listed on this string, and I see that there's</b></p> <p>17    <b>another e-mail attached to it.</b></p> <p>18       <b>(Exhibit 189, an e-mail string, the</b></p> <p>19       <b>earliest in time from J. Potenciano to W.</b></p> <p>20       <b>Burke and others, dated September 21, 2008,</b></p> <p>21       <b>with attached e-mail string, marked for</b></p> <p>22       <b>identification, as of this date.)</b></p> <p>23    A. There seems to be -- there appears to</p> <p>24    be two -- there's one series of e-mails, and</p> <p>25    then after the blue page there's another series</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2   of e-mails.</p> <p>3     <b>Q. Yes, the e-mail string attached,</b></p> <p>4     <b>behind the blue page was attached to the e-mail</b></p> <p>5     <b>that's in front of the blue page.</b></p> <p>6       MR. STERN: So focus first on the</p> <p>7       front of the blue page and then after that.</p> <p>8     <b>Q. I'm only going to, if it helps, I'm</b></p> <p>9     <b>only going to ask you about the e-mail that's in</b></p> <p>10    <b>front of blue page, but go ahead and read the</b></p> <p>11    <b>whole thing if you like.</b></p> <p>12       <b>(Document review.)</b></p> <p>13    A. Okay, I've read the exhibit.</p> <p>14    <b>Q. The first e-mail is from Mark Lee to</b></p> <p>15    <b>Martin Kelly. Can you tell me who Mark Lee is?</b></p> <p>16    A. Mark Lee was a Lehman employee and in</p> <p>17    September of 2008 was asked, I don't remember by</p> <p>18    whom, to work on the 15c3-3 reserve formula.</p> <p>19       Let me be more -- let me be more</p> <p>20    precise. He was not part of Tony Stucchio's</p> <p>21    group, but he was -- he was acting I guess as an</p> <p>22    interface between Martin Kelly and the Reg.</p> <p>23    Reporting Group, the Regulatory Reporting Group.</p> <p>24    <b>Q. Do you know what group he was in?</b></p> <p>25    A. I don't recall precisely which group.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2   It's -- he had something to do with finance and</p> <p>3   information technology.</p> <p>4     <b>Q. He notes in his e-mail, "Just spoken</b></p> <p>5     <b>to Robert." Do you see that?</b></p> <p>6     A. Yes.</p> <p>7     <b>Q. Do you know if he's referring to you?</b></p> <p>8     A. I don't remember if I spoke to Mark</p> <p>9    Lee September 22nd in the evening. I was also</p> <p>10   involved in -- in this effort, as you can infer</p> <p>11   from some of the e-mails sent on here.</p> <p>12    <b>Q. About three lines down he writes, "So</b></p> <p>13    <b>Robert is going to take the last Joel file and</b></p> <p>14    <b>make some assumptions. The guys are working to</b></p> <p>15    <b>bring to 2.3 billion down so we have to take</b></p> <p>16    <b>some hit for this now."</b></p> <p>17       <b>Does seeing that give you any</b></p> <p>18    <b>indication one way or the other as to whether</b></p> <p>19    <b>the Robert he's referring to is you?</b></p> <p>20    A. To the best of my recollection, it</p> <p>21    must have been me. I don't remember any -- any</p> <p>22    other Robert working on this project.</p> <p>23    <b>Q. Do you know what the Joel file is?</b></p> <p>24    A. I believe what he's referring to is</p> <p>25    the file sent by Joel Potenciano.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - R. AZERAD</p> <p>2     <b>Q. Do you know what the 2.3 billion</b></p> <p>3     <b>refers to?</b></p> <p>4     A. No, I don't recall.</p> <p>5     <b>Q. It says in the second line, "The</b></p> <p>6     <b>numbers are taking too long to move</b></p> <p>7     <b>significantly and there is now misassumptions re</b></p> <p>8     <b>the ADI required to remain (see attached)."</b></p> <p>9       <b>That's the first part of that</b></p> <p>10    <b>sentence. Do you know what that refers to?</b></p> <p>11    A. The attachment is what you have after</p> <p>12    the blue page?</p> <p>13    <b>Q. Yes.</b></p> <p>14    A. Okay. I'm sorry.</p> <p>15    <b>Q. As far as I can tell, I mean ...</b></p> <p>16    A. I'm sorry, can you repeat the</p> <p>17    question?</p> <p>18    <b>Q. I just want to know if you understand</b></p> <p>19    <b>what he meant when he wrote that.</b></p> <p>20    A. Not precisely.</p> <p>21    <b>Q. Do you have a general understanding?</b></p> <p>22    A. My general understanding is that the</p> <p>23    calculation of the 15c3-3 formula, I don't know</p> <p>24    at which point, whether it started prior or</p> <p>25    after September 19, became more and more</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

1 HIGHLY CONFIDENTIAL - R. AZERAD  
2 difficult for a variety of reasons, but to the  
3 best of my understanding, primarily because it  
4 was, when I had a discussion with someone from  
5 the Reg. group, and I don't remember which  
6 person, it was explained to me that the 15c3-3  
7 formula was supposed to apply to a going concern  
8 entity, not an entity which had filed for  
9 bankruptcy or receivership.

10 Q. He refers to the ADI. Do you know  
11 what that stands for?

12 A. I believe A and D stands for aggregate  
13 debit. I'm not sure what the "I" --

14 Q. Items?

15 A. -- stands for.

16 Q. That's a portion of the calculation  
17 that needs to be locked up; is that correct?

18 A. That's my understanding. That's my  
19 understanding.

20 I recall that at that time in  
21 September we sometimes used ADI to identify a  
22 part of the cushion which I referred to earlier,  
23 which is cash or securities provided by LBI as  
24 part of a 15c3 -- as part of a lockup required  
25 by the calculation.

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1 HIGHLY CONFIDENTIAL - R. AZERAD  
2 Q. So if the cushion gets released, does  
3 the ADI also get released, or does it remain?

4 MR. STERN: Objection to the form.

5 A. I'm not an expert of the -- of the  
6 15c3-3 formula. My understanding is the ADI is  
7 part of a formula driving the assets to be  
8 segregated. To the extent that the formula  
9 changes, then you may have adjustments upward or  
10 downward to the assets that needs to be  
11 segregated. But it doesn't sound natural to me  
12 to talk about the ADI being released. The ADI  
13 is just an item in the formula.

14 Q. If you look at the e-mail just below  
15 the one that we're looking at, it's an e-mail  
16 from Martin Kelly to Mark Lee, he writes, "We  
17 need to get for ourselves and give to Barclays  
18 comfort that the ADP balances will be  
19 meaningfully reduced. We put in 3.9 billion as  
20 a placeholder." That's what Mr. Kelly's e-mail  
21 says, correct?

22 A. That's what it says, yes.

23 Q. I realize this is something that he  
24 wrote, but do you have any understanding as you  
25 sit here today as to what that means?

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1 HIGHLY CONFIDENTIAL - R. AZERAD

2 A. No, I don't recall.

3 Q. Do you recall any discussions about a  
4 \$3.9 billion placeholder?

5 A. I don't recall.

6 Q. Do you recall anything about an effort  
7 to reduce the ADP balances?

8 A. Not specifically. The thrust of the  
9 efforts as I recall around the 15c3-3 formula  
10 and lockup at that time was since LBI -- this  
11 was, again, either -- I don't remember when LBI  
12 filed for receivership, it was either shortly  
13 before or shortly after, was to provide for the  
14 unwind of the -- of the items requiring for a  
15 segregation of under a 15c3-3 formula in the way  
16 that was as expeditious as possible, but I don't  
17 recall specific discussion around the ADP.

18 MR. STERN: Want to take a short  
19 break?

20 MR. ROTHMAN: Sure.

21 (Recess; Time Noted: 4:25 P.M.)

22 (Exhibit 190, an e-mail chain, the  
23 earliest in time from R. Azerad to P.  
24 Tonucci and others dated September 21, 2008,  
25 marked for identification, as of this date.)

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1 HIGHLY CONFIDENTIAL - R. AZERAD

2 (Exhibit 191, an e-mail chain, the  
3 earliest in time from J. Potenciano to W.  
4 Burke and others, dated September 21, 2008,  
5 with attachment, marked for identification,  
6 as of this date.)

7 (Exhibit 192, an e-mail from R. Azerad  
8 to P. Tonucci dated September 22, 2008,  
9 marked for identification, as of this date.)

10 (Time Noted: 4:38 P.M.)

11 BY MR. ROTHMAN:

12 Q. While we were the off the record, I  
13 marked three exhibits. We'll take them in  
14 order. Exhibit 190, which you have in front of  
15 you, Mr. Azerad, is an e-mail string. The top  
16 e-mail is from Martin Kelly to Mark Lee dated  
17 Monday, 9/22/2008. The e-mail below that is the  
18 one I'm going to ask you about. That's from  
19 Mark Lee to you. It's dated Sunday, September  
20 20.

21 A. I've read Exhibit 190.

22 Q. Okay. I just direct your attention to  
23 the line in the e-mail from Mr. Lee to you where  
24 he writes, "The guys are focused on the 2.3  
25 billion now and reducing this as priority."

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 In re: )  
6 ) Chapter 11  
7 LEHMAN BROTHERS ) Case No. 08-13555(JMP)  
8 )  
9 HOLDINGS, INC., et al., )  
10 )  
11 Debtors. )  
12 ----- )  
13

14 HIGHLY CONFIDENTIAL DEPOSITION OF  
15 ALASTAIR BLACKWELL  
16 New York, New York  
17 Friday, August 7, 2009  
18  
19  
20  
21  
22

23 Reported by:  
24 KRISTIN KOCH, RPR, RMR, CRR, CLR  
25 JOB NO. 24037

1  
2 ALASTAIR BLACKWELL,  
3 called as a witness, having been duly sworn  
4 by a Notary Public, was examined and  
5 testified as follows:

6 EXAMINATION BY  
7 MR. HINE:

8 Q. Good morning, Mr. Blackwell.

9 A. Good morning.

10 Q. How are you?

11 A. Very good, thanks.

12 Q. I am sure your counsel has told you  
13 what's going on here today, but we are here  
14 taking a deposition involving the Lehman  
15 bankruptcy proceedings.

16 My name is Bill Hine and I am from  
17 Jones Day, which is the firm that's special  
18 counsel to LBHI. Several of the other counsel  
19 along the table will introduce themselves  
20 later, but they represent various entities that  
21 are involved in this proceeding.

22 So the way this is going to work is  
23 I am going to ask you a bunch of questions  
24 first and they will all take turns with you  
25 later as we progress.

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1 Blackwell - Highly Confidential

2 A. Understood.

3 Q. As we go, I am going to be asking  
4 you a series of questions. You are under oath,  
5 so you will answer the questions. At some  
6 points in time you will hear your counsel state  
7 an objection. That doesn't mean you don't have  
8 to answer the question. That just means he is  
9 either preserving the record or he wants to ask  
10 me to clarify the question. If he instructs  
11 you not to answer, that's up to you as well,  
12 but the mere fact that he makes an objection  
13 doesn't mean you don't have to answer the  
14 question.

15 In that vein, I'd like to ask you  
16 just please ask me to clarify any question  
17 where I might misuse an acronym or a word. I  
18 feel like I am learning a new language here  
19 reading all you folks' e-mail, so I know there  
20 is technical financial words that you guys use  
21 and you understand readily, but if you need me  
22 to clarify one, I want to have a clear question  
23 so you can answer it.

24 I think your counsel has probably  
25 told you, but you have been designated as a

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1 Blackwell - Highly Confidential  
2 30(b)(6) witness for a select set of issues in  
3 this case and those issues relate to Schedules  
4 A and B of the Clarification Letter. We will  
5 get to that later, but I just want to let you  
6 know that, and that I will alert you to that  
7 fact when we get to that portion of the  
8 deposition, so in that portion you will be  
9 speaking on behalf of Barclays.

10 So I am ready to proceed if you are.  
11 Are we ready to do this?

12 A. Absolutely, yes. Thank you.

13 Q. Can we start off with a little  
14 background information about you.

15 You are currently employed by  
16 Barclays Capital; correct?

17 A. I am, yes.

18 Q. And what is your present position?

19 A. I am responsible for the Americas  
20 operations department for capital markets.

21 Q. Okay. And do you have a title?

22 A. I am a managing director.

23 Q. When did you start your employment  
24 at Barclays?

25 A. I received a contract after

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1 Blackwell - Highly Confidential

2 bankruptcy, I don't know exactly when I signed  
3 that, but it would have been, I think, two  
4 weeks after bankruptcy that I signed a contract  
5 to join Barclays. I wasn't one of those people  
6 that received an e-mail and clicked off on it,  
7 for instance.

8 Q. Okay. When did you -- that's the  
9 contract, we will get to that in a second, but  
10 when did you consider yourself a Barclays  
11 employee?

12 A. Post bankruptcy.

13 Q. Was it upon the closing of the sale  
14 transaction?

15 A. I would think so, yes.

16 Q. And just as we go forward, if I  
17 refer to the sale transaction, can we agree  
18 that that will be the transaction that closed  
19 on the 22nd of September 2008 whereby certain  
20 assets were transferred to Barclays? Can we  
21 agree on that?

22 A. What time is that?

23 Q. I don't know the time.

24 A. Midnight from that day.

25 Q. Okay. So is it fair to say after

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1 Blackwell - Highly Confidential  
2 which is led by James Black and informally  
3 managed by Alex Crepeau until about a week ago.

4 **Q. When you talk about operations**  
5 **function, is there a component of that of your**  
6 **work that covers valuing or marking assets?**

7 A. I want to be very precise about the  
8 way I would describe that. There is a function  
9 in operations that values positions, but that's  
10 using data, pricing data, that is either  
11 purchased from a third party or is consumed  
12 from a front office trading source, so we are  
13 not determining a valuation on a security. We  
14 do not determine valuation.

15 **Q. But you mark the security with this**  
16 **information that you receive from a third**  
17 **source?**

18 A. It's a mechanical process.  
19 Inventory, mark, it gives you a result. It's  
20 not -- you are not applying any thought to it  
21 other than is that actually the security that  
22 our mark ties out to.

23 **Q. Could we go back now to your last**  
24 **position you held at Lehman.**

25 **First of all, how long did you work**

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2 **for Lehman?**

3 A. I worked for Lehman from November  
4 27th, 2000 until the 22nd of September, 2008.

5 **Q. And what was the last position you**  
6 **held at Lehman?**

7 A. I was global head of operations for  
8 both capital markets and IMD. I was in the  
9 process of taking responsibility for Aurora  
10 loan services, but I hadn't been formally  
11 announced, so that was matter of a few weeks'  
12 worth of effort, but I didn't have any formal  
13 management responsibility at that point, so you  
14 will see information in my e-mails associated  
15 with Aurora.

16 **Q. And who did you report directly to**  
17 **in that position?**

18 A. I reported to Ian Lowitt.

19 **Q. Anyone else?**

20 A. No.

21 **Q. And who were your direct reports?**

22 A. In the United States, Neal Ullman,  
23 who is global head of our clearance and custody  
24 function. Monty Forrest, who is global head of  
25 prime services operations. Kirk Butryn who was  
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2 co-head of equity operations. Alex Crepeau,  
3 who was responsible for regulatory operations,  
4 tax, operations control, client valuations and  
5 margin. I believe that's all of them from  
6 memory. In the U.K. there is a gentleman  
7 called Garth Barker Goldie, who is responsible  
8 for European operations, and in Asia,  
9 Christopher Flanagan, who was responsible for  
10 our Asian operations. And there was also --  
11 actually, there is another gentleman called  
12 Stewart Nineham who was my CAO in -- global  
13 CAO.

14 **Q. Can you explain to me in your Lehman**  
15 **role whether your group was responsible for**  
16 **valuing or marking securities? Same question**  
17 **only I am trying to see if the Lehman role was**  
18 **the same.**

19 A. It was identical. In terms of  
20 consumption of data, any model-driven pricing  
21 would be front-end trading, trading  
22 responsibility to provide a mark, and finance  
23 function at Lehman Brothers, product control,  
24 for want of a better term, was responsible for  
25 price testing, so they would test the models to

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2 ensure that those were accurate and produce the  
3 result that they were intended to do.

4 **Q. And who were in charge of those**  
5 **functions at Lehman; do you recall?**

6 A. The front office was various  
7 different business heads, so, I mean,  
8 ultimately it would have been Bart as president  
9 and head of risk effectively, but Gelband was  
10 responsible for the fixed income division and  
11 Jerry Donini was responsible for equities, and  
12 the IMD business theoretically didn't take any  
13 risk.

14 **Q. I don't mean to be intrusive, but I**  
15 **have to ask you some questions about your**  
16 **compensation.**

17 MR. SHAW: This is all highly  
18 confidential.

19 MR. HINE: Yes.

20 **Q. When you transitioned from Lehman,**  
21 **your position at Lehman to your position at**  
22 **Barclays, did your compensation increase?**

23 A. No, actually, it declined.

24 **Q. Declined. In what way?**

25 A. I had a two-year guarantee from  
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2 Lehman Brothers in 2007 and the first year of  
3 that guarantee was -- for 2007 I think was  
4 \$2.7 million. The second year was  
5 \$3.5 million. My -- obviously the majority of  
6 that comp gets paid in stock. At the point of  
7 transition there was a process which you  
8 probably see in my e-mail where I was offered a  
9 certain role and I considered it over a period  
10 of time and decided to do something slightly  
11 different and at that point we agreed that I  
12 would have a two-year contract because of  
13 uncertainty about where the future would lead  
14 and the compensation was tied to my 2007  
15 number, so it was probably approximately  
16 \$700,000 less. There were some additional  
17 incentive payments for longevity at two points  
18 in September of this year and September of  
19 next, but I think the headline number was  
20 probably less than overall what my Lehman  
21 compensation would have been in 2008.

22 **Q. And what position were you**  
23 **considered for that -- you alluded to a**  
24 **suggestion of a position and you opted for**  
25 **something else. Could you just explain to me**

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2 **what you meant by that?**

3 A. I had been global head at Lehman  
4 for, I think, three or four months, a  
5 relatively a short period of time. The role  
6 that I was offered was running Americas  
7 operations and being co-head of the equity  
8 operations organization. In my mind that was  
9 taking me back four or five years in my career  
10 and I didn't really see the -- it didn't feel  
11 appropriate, so I was a little unhappy that  
12 that was what I was being offered and I  
13 certainly wasn't -- yeah, I was -- it wasn't --  
14 it didn't feel like the right thing for me at  
15 that point, but I was very keen to help  
16 everyone with the integration process. I felt  
17 I had a moral obligation to my team to make  
18 sure that happened, and though I was being  
19 offered jobs externally for some period of  
20 time, I felt I wanted to stay and see this  
21 through and put faith in the organization to  
22 find me a role in the future, which I am still  
23 hoping will happen.

24 **Q. You said you were head of global for**  
25 **only three months. What was your position**

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2 **prior to your position as head of global for**  
3 **Lehman?**

4 A. I had global responsibility for  
5 prime services operations. I also had global  
6 responsibility for equity operations, and in  
7 addition to that I was European head of  
8 operations, so I commuted back and forth  
9 between London and New York almost on a weekly  
10 basis for about a year, little less than a  
11 year.

12 **Q. Back to your compensation, can we**  
13 **just break it into some components here just so**  
14 **I understand it. I take it at Lehman you had a**  
15 **base salary?**

16 A. Yes.

17 **Q. And what was that?**

18 A. I think it was \$200,000.

19 **Q. And then you had -- am I correct to**  
20 **say you had a cash component bonus and an**  
21 **equity component bonus?**

22 A. Yes, that's correct. Off the top of  
23 my head I wouldn't be able to tell you. I  
24 could go back and look at documents and confirm  
25 it, but the number I recall would be

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2 \$2.5 million of bonus, of which somewhere  
3 between 50 and -- I would imagine somewhere  
4 around 50 percent would be cash, 50 percent  
5 securities, deferred five-year equity.

6 **Q. And that was for 2007, you said?**

7 A. Correct.

8 **Q. Now, in 2008 your base salary was**  
9 **still the same; correct?**

10 A. Correct.

11 **Q. Okay. And then you expected to make**  
12 **3.2 in bonus, whether it's cash or equity?**

13 A. No, my base was 200. I was  
14 expecting 3.5, so I was expecting 3.3.

15 **Q. You are right. I am bad at math.**

16 **When you went to Barclays, out of**  
17 **that 3.3 did you receive any of it?**

18 A. No.

19 **Q. Did you receive any payment from**  
20 **Barclays that was supposed to have compensated**  
21 **you for your 2008 bonus?**

22 A. I received a bonus in February in  
23 the normal compensation cycle, so yes, I  
24 received a bonus payment, but I think it was to  
25 compensate me for -- that it was to retain me

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as an employee of the organization and I was performing an important role within the organization.

**Q. Okay. So you didn't view it as reimbursing you or compensating you for the first nine months of the year that you have spent at Lehman; is that right?**

A. No.

**Q. No, it's not right or -- I asked a strange question.**

**Did you view it as compensating you for your first nine months of work that you had spent at Lehman in 2008?**

A. No.

MR. HINE: I want to show you a document here which we are going to mark as Exhibit 55 B.

(Exhibit 55 B, letter dated October 2, 2008, Bates stamped BCI-EX-00077291 through BCI-EX-00077293, marked for identification.)

**Q. Mr. Blackwell, I have just handed you a document marked as 55 B. I just wanted to ask you if you have ever seen that document**

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before.

A. Yes.

**Q. What is that?**

A. That is the contract that Carol Machell handed me, offered me to become an employee of Barclays Capital.

**Q. And is that your signature on the last page?**

A. Yes.

**Q. You said you wanted to say something in addition to supplement your prior testimony.**

A. Yes. I just wanted to mention that in addition to my regular compensation in 2008, Lehman Brothers awarded me a special stock award, I think it was in July, of some deferred stock issued at a discounted price, which would vest in three years. There was no partial vesting. It was full vesting in three years. So I just wanted to put that on the record as well.

**Q. And that is part of your Lehman compensation for 2008?**

A. It was approximately --

MR. SHAW: Objection. Foundation.

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A. Sorry. Could you ask the question again?

**Q. Why did they give you this award?**

MR. SHAW: Objection. Foundation.

MR. HINE: You can answer.

A. My understanding is that we were obviously seeing a lot of employees leave the firm at that point in time, there was a lot of movement in the marketplace, people moving around, and I think my understanding was it was to show that I was a valued employee.

**Q. Okay. And what was the value of this -- did you say it was an option?**

A. Deferred stock. I don't have the document, I haven't looked at it for a very long time, but it was approximately a million dollars of deferred discounted Lehman securities.

**Q. And did you consider that part of your compensation for your work in 2008?**

A. I considered it as part of my compensation in 2008, yes. I didn't consider it in the headline number I gave you of \$2.7 million. That was in addition.

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**Q. I understand. We will just look at your contract here for a second. You have testified about some of this. I just want to make sure I understand it.**

Where it says "Compensation," the heading Compensation, it mentions a base salary of 200,000. That's what you testified earlier; correct?

A. Correct.

**Q. So that's your base salary now at Barclays?**

A. It is.

**Q. Then it talks about a 2008 guaranteed cash bonus. Do you see that line?**

A. I do.

**Q. And now is that -- have you been paid that?**

A. I have.

**Q. And is that -- what is that for? Why were you paid that?**

MR. SHAW: Objection. Foundation.

A. Compensation for my employment by Barclays.

**Q. Okay. So that's compensation for**

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2 **your employment by Barclays for the period that**  
3 **you worked for them in 2008?**

4 MR. SHAW: Objection. Foundation.

5 MR. HINE: You can answer.

6 A. I would think of these in the normal  
7 course of business when you transfer between  
8 companies, if I moved to Citibank, for  
9 instance, I would have expected to receive a  
10 guarantee or award to move in a half year, so  
11 when I think of this, this is for my period of  
12 employment with Barclays, but I think it's  
13 relatively standard practice that somebody at  
14 my level leaving between organizations, which  
15 is effectively what happened, would be  
16 compensated and I would think of that as my OA  
17 comp.

18 **Q. Later on I see 2008 EPP**  
19 **Recommendation. Do you see that heading?**

20 A. I do.

21 **Q. Can you describe for me what this**  
22 **is?**

23 A. I understand this to be deferred  
24 compensation, a stock award, to the value --  
25 and I'm not sure what it was awarded at, I

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2 haven't paid any attention to it, but it's an  
3 award that will vest over a three-year period,  
4 so if I am an employee in three years from now  
5 at Barclays, then I will receive that -- I will  
6 receive that stock.

7 **Q. Okay. Did you, in fact, receive**  
8 **this award on March 15th, 2009?**

9 A. I received the award, but not on  
10 March 15th.

11 **Q. When did you receive it?**

12 A. I don't know the precise date, but  
13 it was late. It was later in the year.

14 **Q. Okay. Do you have an approximate**  
15 **date you can give me?**

16 A. No.

17 **Q. Then I see something called 2009**  
18 **guaranteed cash bonus. Do you see that?**

19 A. I do.

20 **Q. Now, is that the bonus that you**  
21 **previously described when you were talking**  
22 **about the bonus that you expect to receive from**  
23 **Barclays going forward?**

24 A. This is the bonus I expect to  
25 receive for my work and performance in 2009.

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2 **Q. And continuing down on the list we**  
3 **see 2009 EPP recommendation, which appears to**  
4 **be a stock award.**

5 **Is that what you expect to receive**  
6 **as a stock bonus for your work in 2009?**

7 A. Yes.

8 **Q. Now, continuing further down you see**  
9 **a special cash award which mentions the sum of**  
10 **\$1.225 million. Do you see that?**

11 A. I do.

12 **Q. What is that for?**

13 A. I think this is --

14 MR. SHAW: Objection. Foundation.

15 A. I think this is an award, it's  
16 effectively a retention payment to encourage me  
17 to stay at the firm over that period of time,  
18 because, again, there have been alternatives  
19 along the way and I want to stay at Barclays,  
20 so I think that's what that payment is for.

21 **Q. And you haven't received that yet?**

22 A. No.

23 **Q. But you expect to receive it on the**  
24 **anniversary of your employment?**

25 A. Yes. 22nd of September I would

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2 expect to receive the first half of that  
3 payment.

4 **Q. Can you tell me when you first began**  
5 **discussions with Barclays about your employment**  
6 **arrangement that you expected to have with**  
7 **them?**

8 A. It was in the week immediately  
9 after -- immediately after LBI's filing after  
10 the 22nd. I don't think discussions began  
11 until later in that week. I think around the  
12 24th or 25th, but I can't recall precisely.

13 **Q. Okay. Can I just clarify some**  
14 **dates. I will represent LBHI filed on the**  
15 **15th.**

16 A. Absolutely.

17 **Q. Correct? Okay. LBI filed on the**  
18 **19th; correct?**

19 A. Yes.

20 **Q. Okay. And during that week did you**  
21 **have any discussions with Barclays about your**  
22 **potential employment there?**

23 A. No.

24 **Q. Did you have any discussions with**  
25 **anyone else?**

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A. I was incredibly busy, incredibly busy. Friends and family were concerned and it's possible that I made reference to the fact that I would become a Barclays employee at some point, I assumed. I had an assumption. I had no knowledge that I would be and I had no discussions that were suggested I would be.

**Q. And so did I understand you correctly to say that you didn't have such discussions until after the closing of the sale transaction?**

A. Yes. It wasn't until, I think, the earliest the 24th. It was certainly into the -- post LBI's bankruptcy after the APA was signed.

**Q. And who did you have those discussions with at Barclays?**

A. Carol Machell. At Barclays, Carol Machell.

**Q. Did you discuss it with Michael Evans at all?**

A. Absolutely not.

**Q. And Carol Machell is the person who ultimately became your supervisor?**

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A. Absolutely.

**Q. What do you recall about those discussions?**

A. The financial component was of little interest to me, frankly. I was expecting that we would discuss a role and the discussion didn't go very well, because I wasn't very happy in terms of the role. The focus wasn't on the financial components. I have no dependents. I don't -- the money isn't the main motivator in why I go to work. I was looking for an interesting role in an organization which I thought would be an interesting place to be and the role that I was initially offered I thought was -- didn't meet my expectations and, therefore, I actually considered leaving. What we had discussed in that first set of conversations was that I would go away and think about it and, again, I wanted to be responsible and work with Carol to ensure there was a smooth integration, so that wouldn't mean I would leave immediately, but work for a period of time, certainly into the new year to help with a smooth transition of my

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staff.

**Q. Was there any back-and-forth on the numbers?**

A. Yes, because it was -- the original contract I was offered was more money than this.

**Q. So could you just summarize what the back-and-forth was?**

A. It was more about the duration, the value of the contract, the cash award or whatever -- I don't recall the numbers exactly, but it was more than this contract.

**Q. When you say "the duration," you mean the length of your expected employment?**

A. This contract effectively has several components, but I would look at it as a two-year contract, and the contract that I was offered was a one-year contract with two years of incentive payments. From memory. I may not be precise. But certainly the role was the core part of my focus.

**Q. During the week of the 15th, in other words, after LBHI's filing leading up to eventually LBI's filing, did you have any**

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**understanding of the arrangements that had been made as to compensation for former Lehman employees?**

A. No.

**Q. Did you have any knowledge of the provisions in the APA that related to compensation?**

A. No.

**Q. Did you have any role in negotiating those types of provisions?**

A. No. I was asked to make lists of people who were critical to certain things, but that was it.

**Q. Did you hear any rumors about how former Lehman employees were going to be compensated when they moved to Barclays?**

A. Can you be precise about the time frame you are talking about?

**Q. I am talking about the week of -- let's talk about the week of September 15th. In other words, LBHI has filed, LBI has not yet filed, but that five-day period.**

A. All I had heard was speculation in the press, and from my recollection I can't

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**Q. Was that instruction related to the bankruptcy?**

A. No, it wasn't related to the bankruptcy. It was related to LBI's functioning, ongoing functioning.

**Q. Did you have any discussion -- when you say "LBI's functioning," is that -- are you talking about the fact that LBI did not file for bankruptcy until several days later?**

A. Correct.

**Q. Okay. So what were you doing to assure LBI's functioning?**

A. Ian asked me to do two things. Be able to be -- be able to function -- have LBI function as an entity by itself from an operational standpoint, so -- and also work with treasury to create a funding ladder for the week, so based on the settlement activity that would be taking place over the course of that week, lay out a cash flow, and also put a payment protocol in so that no payment, no cash could leave LBI. So that was done. Myself and Bridget O'Connor, who was the Lehman head of technology, went away and worked with our

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respective teams and our teams then worked together to execute that. We worked into, I think, the early hours of the night to determine what we thought the cash flows would be. I provided that ladder, funding ladder, to the treasury department, which is run by Paolo Tonucci.

**Q. So you used a lot of words there. I just want to see if I understand.**

**Is this the financing that was provided by the Fed to LBI?**

A. No. This is -- the cash flows -- in the securities business, exchange securities for cash. In the exchange of securities for cash, obviously some security is leaving, some securities are coming into inventory. Some client securities are coming in and leaving. And the associated cash flows that went with that was to understand what the net cash position each day would be if the firm had perfect settlement. And when I say "perfect settlement," I mean all transactions, so all securities and consideration settled on the contractual settlement date.

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**Q. So back to your role during that week, now on the 15th you learned that LBHI has filed for bankruptcy; correct?**

A. Is that -- what day of the week --

**Q. That's Monday.**

A. That's the Monday. I think it was Sunday night.

**Q. So you heard about it Sunday night?**

A. I think so. It was the 14th. Late Sunday night.

**Q. What did you hear -- apparently on the 15th Barclays and Lehman start speaking again and they eventually arrive at an APA.**

**Can you describe for me any role you played in that process?**

A. I didn't know that Barclays -- I wasn't involved in any of those discussions, so I played no role.

**Q. Okay. So did the APA come as a surprise to you when you heard that?**

A. I didn't know -- does the agreement --

**Q. That was a bad question.**

**How did you first hear that there**

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**was going to be a sale transaction between Barclays and Lehman?**

A. I think on the Monday what I was asked to do as another set of actions was work towards a conversion and the way I would interpret a conversion is that there is going to be some -- either some asset sale or the whole organization is going to be sold as a going concern, the LBI organization would be sold as a going concern. So I'm sure you can see it in my e-mail as well, there was a series of meetings to create a project plan, to work -- which involved technology, finance, operations, to have -- create a fully functioning broker/dealer for whenever that was going to be. So that was an incredibly onerous piece of work. These things normally take months and years to create and we were given a very compressed time frame to try and do that, so I was trying to get a business up and running again potentially. That's the way I interpreted that. Those were my marching orders at that point. So I had no idea what the content -- what sale meant.

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**Q. Did you have an understanding of the terms of the Asset Purchase Agreement?**

A. I didn't know an Asset Purchase Agreement existed at that point.

**Q. Have you ever seen an Asset Purchase Agreement?**

A. I have, but not -- I have, yes, I have, but much, much, much post bankruptcy. Maybe weeks afterwards.

**Q. Okay. That was a badly phrased question.**

**Have you -- when I meant "Asset Purchase Agreement," I meant the Asset Purchase Agreement that's at issue in this case, which is the one between Barclays and Lehman.**

**So am I correct to understand you to say you didn't see that agreement until after the closing of the sale transaction?**

A. I believe so. It may have hit my e-mail. I don't ever remember reading it. I think it's highly unlikely that I saw it until after bankruptcy, and it's certainly the case that I was asking Jonathan Hughes post bankruptcy --

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MR. SHAW: Let's not get into any discussions you had with Jonathan.

MR. HINE: Is Jonathan a lawyer?

MR. SHAW: He is the general counsel.

MR. HINE: So you are asserting a privilege over that conversation?

MR. SHAW: Yes.

**Q. I just want to be clear. When we talk here, when you said "bankruptcy," you were talking LBI's bankruptcy?**

A. I am talking about LBI's bankruptcy, yes. I had no knowledge of an APA pre bankruptcy and the content of it.

**Q. Did you have any understanding of what the sale transaction was supposed to accomplish?**

A. I had a set of actions to perform, which was providing data to my supervisor, to Ian Lowitt, and those components were clearly -- at certain points it became clear they were part of the transaction, but I didn't know what part, and I had very limited understanding. It was perform this task, get

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the task done, and that's what I tried to execute as effectively as I could.

**Q. And so did you ever -- again, I understand that and we will go through those tasks as we go, but did you ever have any inkling about a \$70 billion figure with respect to the assets that were going to be transferred to Barclays?**

A. 70 billion?

**Q. Yes.**

A. That's not a number that sticks out in my memory, no.

**Q. Did you ever hear anyone talk about a discount that was being awarded to Barclays with respect to Lehman assets?**

A. No. And I think when I was asked what the deal content was by one of my colleagues, I pointed them in someone else's direction to the deal lawyers. I didn't have details of that.

**Q. Did you have any -- I'm not asking about whether you were involved in discussions, but did you hear any rumors or, you know, water cooler talk about a discount being awarded to**

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**Barclays as to Lehman assets?**

A. I don't think so, no.

**Q. Did you ever hear the phrase "block discount" used in connection with the sale transaction?**

A. Block discount, no.

**Q. Did you ever hear that phrase or a similar phrase used when it came to valuing assets that were supposed to be transferred to Barclays?**

A. No. I wasn't focused on anything related to valuation, so that wasn't really -- making lists of securities was different than determining what they should be worth in aggregate.

**Q. We will get into that more. I understand.**

**Did you ever hear anyone refer to the transaction as a wash transaction or words to that effect?**

A. No.

**Q. Is it fair to say that you really were fairly unfamiliar with the specific contractual terms of that transaction during**

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2 that week?

3 A. Very unfamiliar.

4 Q. I want to show you a document --  
5 some of these documents I am going to show you  
6 just to see if you know about them or what you  
7 know about them.

8 A. I'd just like to make a point. I  
9 was sending or receiving about a thousand  
10 e-mails a day at that time, I think,  
11 approximately, so documents passed across my  
12 e-mail. It was physically impossible for me to  
13 consume all that information.

14 MR. HINE: I understand.  
15 Let's mark this as the next exhibit.  
16 (Exhibit 56 B, e-mail dated May 29,  
17 2009, Bates stamped 10295594, with attached  
18 fax, Bates stamped 10300652, marked for  
19 identification.)

20 Q. Mr. Blackwell, I am handing you a  
21 document that's marked as Exhibit 56 B, which  
22 appears to be an e-mail in or about Monday,  
23 September 15th, 2008, and attached to it is a  
24 fax that's addressed to you and it's attaching  
25 a document entitled Custodial Undertaking in

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2 Connection With Master Repurchase Agreement.

3 A. The repo agreement.

4 Q. Right. So my question to you is  
5 have you ever seen this agreement or this  
6 document?

7 MR. SHAW: Take a chance to look  
8 through it.  
9 (Document review.)

10 A. I don't recall looking at this. I  
11 think it's a standard repo agreement.

12 Q. Can I just ask you a question or two  
13 about -- this repo agreement relates to an  
14 agreement between Lehman, Barclays and JPMC or  
15 JPMorgan Chase.

16 In your role as head of operations,  
17 did you deal with repurchase agreements of this  
18 nature?

19 A. We processed repurchase agreements.  
20 We didn't agree to commercial terms of a  
21 repurchase agreement, but we processed it.

22 Q. What do you mean by process it?

23 A. So in terms of the technical way  
24 that you would manage a tri-party repo  
25 agreement is that you have a tri-party agent  
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2 and two counterparties. A firm's tri-party  
3 agent selects the collateral based on the  
4 agreement terms, what collateral becomes  
5 eligible, and will pledge that. You book  
6 something called a shell on -- operations book  
7 a shell to the value that the tri-party agent  
8 has pledged based upon their market value, and  
9 so those components are then fed into a system  
10 to record the repo transaction. So that is  
11 sort of bread and butter activity for a  
12 broker/dealer, how a broker/dealer would fund  
13 itself. So it's a daily event with multiple  
14 counterparties. Chase were Lehman's primary  
15 tri-party agent.

16 Q. So there was a pre-existing Master  
17 Repurchase Agreement involving these three  
18 parties; is that right?

19 A. I believe so. I don't know.

20 Q. My real question is do you know why  
21 this was executed or this was either presented  
22 to you or executed on the 15th, which is the  
23 date of the LBHI bankruptcy?

24 A. From looking at this it looks like  
25 they were trying to set up a new agreement. I

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2 don't think it was used ultimately.

3 Q. You don't think --

4 A. I don't think so, because I think --  
5 because Bank of New York were Barclays' -- I  
6 think the attempt here was due to a technical  
7 constraint, Lehman Brothers did not have  
8 tri-party structure in place because of the  
9 volume of transactions. The operational  
10 technicalities of doing this were too complex.  
11 So the goal was to set up -- I think, I may be  
12 wrong, because I'm not the expert, the team  
13 that run this are the experts, hence why they  
14 are on here. The finance team and the treasury  
15 team and the operations team responsible for  
16 processing the repo are the experts. I believe  
17 from memory that there was an attempt to set up  
18 a Barclays arrangement with Chase at that  
19 point. I think this was scrapped as a  
20 structure. I think so, but I may be wrong.

21 Q. Who should I ask -- who would you  
22 ask if you really wanted -- I understand you  
23 don't have intimate knowledge, but who should I  
24 ask that question?

25 A. Well, the business person that would  
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2 **Q. Okay. Can we go through some**  
3 **terminology here just so I understand.**

4 I see in a lot of e-mails the phrase  
5 "BONY tri-party." Can you just tell me what  
6 that is meant to encompass?

7 A. BONY is Bank of New York. Tri-party  
8 is a type -- is a repo.

9 **Q. Okay. I didn't mean to interrupt**  
10 **you, but we have been discussing a repurchase**  
11 **transaction on September 18th involving**  
12 **Barclays, Lehman and BONY.**

13 Is that what you folks call the BONY  
14 tri-party in the e-mail, generally?

15 A. I think that's very broad.

16 **Q. What would you understand that BONY**  
17 **tri-party to be?**

18 A. Depends on the context.

19 **Q. Okay. Did there come a point in**  
20 **time -- well, let's step back to the Monday**  
21 **again.**

22 Did you learn at some point that the  
23 fed was providing some kind of financing to LBI  
24 during that week?

25 A. Yes. We had been pledging more and  
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2 more of our -- we had a large repo under  
3 various different schemes with the Fed.

4 **Q. When you say various different**  
5 **schemes, is that -- I see acronyms PDFC, OMO**  
6 **and TSLF. Is that what --**

7 A. Correct.

8 **Q. So those are three different Fed**  
9 **programs?**

10 A. Yes.

11 **Q. Am I correct to say that on Monday**  
12 **night, Tuesday night and Wednesday night of**  
13 **that week the Fed was providing some sort of**  
14 **financing under those programs to Lehman?**

15 A. It was a repo, again, pledging  
16 assets through Chase and a tri-party agent to  
17 the Fed and the Fed provided cash.

18 **Q. And now were you involved in**  
19 **selecting the assets that were pledged?**

20 A. The mechanism by which assets are  
21 selected are driven by the repurchase  
22 agreements and the schedules attached to the  
23 repurchase agreements that are in place. So it  
24 was eligible collateral. So that's an  
25 automated process in a normal course of  
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2 business in that your tri-party agent will look  
3 at the eligible collateral and pledge that on  
4 your behalf to the Fed and then you get a file  
5 from in this instance Chase, which is uploaded  
6 into your system, into your repo shell to  
7 reflect the securities that are being pledged.

8 **Q. Okay. Is that what took place in**  
9 **this instance?**

10 A. As far as I understand, in the early  
11 part of the week, that's absolutely what  
12 occurred.

13 **Q. So, again, I'm not trying to put**  
14 **words in your mouth. I am just trying to**  
15 **translate it into something that a non-finance**  
16 **person can understand.**

17 Is it correct to say that JPMC or  
18 Chase selected the securities that were pledged  
19 to the Fed?

20 A. That would be my understanding of  
21 the mechanism. The individuals within the  
22 business, treasury and operations that  
23 transacted or carried out those functions could  
24 give you a much more precise answer.

25 **Q. So you are talking about within**  
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2 **Lehman's treasury department?**

3 A. Yes, and operations, Jim Hraska.

4 **Q. Jim Hraska?**

5 A. Yes.

6 **Q. And at some point you learned, I**  
7 **take it, that there was going to be some kind**  
8 **of transaction where Barclays would be**  
9 **providing that financing instead of the Fed;**  
10 **correct?**

11 A. Correct.

12 **Q. Tell me what you understood about**  
13 **that.**

14 A. I was initially contacted -- I think  
15 conversations had already been taking place  
16 between John Coghlan, treasury and Barclays  
17 about how a repo process would take place. A  
18 gentleman called David Aranow and John Feraca  
19 were -- both of them were asked by John Coghlan  
20 to basically run the process of moving the  
21 collateral that was currently pledged to the  
22 Fed under the various programs, and I am going  
23 to caveat that, I will come back to that in a  
24 second, under the various programs, and the  
25 collateral that was eligible over to Bank of

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2 New York. Now, I think the first conversations  
3 were had on the 17th -- sorry, I think --  
4 that's when I first started to hear about this,  
5 I think, around the 17th, and I think it was  
6 determined it was technically -- not say  
7 impossible, but incredibly difficult to move  
8 that amount of collateral on that day, which  
9 was, I think, what had been discussed, so it  
10 was then determined that that would then happen  
11 the following -- I think it was the following  
12 day, so there was some setup work that was  
13 required and you will see that communication  
14 flying around between treasury, operations and  
15 business as how to set this -- set the  
16 mechanism up to facilitate that. And this is a  
17 very large amount of collateral --

18 **Q. Sure.**

19 A. -- so there are a lot of operational  
20 complexities to it. So at that point that's  
21 when I was aware that we were in the process  
22 of -- that Barclays were going to be funding  
23 the LBI entity through the repo and taking the  
24 Fed's exposure away or relieving Fed's  
25 exposure.

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2 MR. SHAW: When you reach a logical  
3 stopping point, we have been going about an  
4 hour.

5 MR. HINE: Do you want to take a  
6 break?

7 THE WITNESS: Another five minutes  
8 or so.

9 **Q. I think I understood what you just  
10 said. Now, do you know if the same collateral  
11 that was supporting the Fed financing on  
12 Wednesday night was, in fact, transferred to  
13 Barclays to support its tri-party?**

14 A. It wasn't. No, it wasn't. It  
15 was -- again, there is -- it's an awful lot of  
16 operational complexity, it's a huge number of  
17 securities and no -- there were differences in  
18 the schedule that the Fed held versus what  
19 actually then ended up in Bank of New York's --  
20 in Bank of New York's tri-party account.

21 **Q. Okay. So this is -- when I see the  
22 phrase "Bank of New York tri-party," that's --  
23 if it's dated at this time, it's probably  
24 talking about the Barclays tri-party with Bank  
25 of New York acting as the agent; correct?**

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2 MR. SHAW: Objection to form.

3 A. Again, it's a broad term. I'd need  
4 specific --

5 **Q. I will withdraw that question. I  
6 understand.**

7 **So what is the difference, if you  
8 know, between the collateral that was  
9 supporting the Fed financing on Wednesday night  
10 and the collateral that was transferred to  
11 Barclays on sometime Thursday?**

12 MR. SHAW: Objection to form.

13 A. There were a series of operational  
14 issues that occurred at Chase, first of all,  
15 and also the repurchase agreement, collateral  
16 that's eligible to be transferred to BONY,  
17 create a difference, so, you know, those  
18 operational processes at Chase which were -- I  
19 don't have any visibility over and, frankly,  
20 have limited visibility at what's happened at  
21 Chase post the event as well, resulted in some  
22 of the collateral being delivered from the Fed  
23 into the Lehman box and pended settlement took  
24 place, so that the securities that were  
25 released from the Fed were delivered into the

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2 Lehman box and trades that were pended for  
3 settlement were settled that were unrelated to  
4 the repo, but were trades that had been entered  
5 into by Lehman Brothers on a previous date.

6 **Q. So am I correct -- so Chase settled  
7 other trades with the money -- with the  
8 securities that had been released from the Fed  
9 funds?**

10 A. So Barclays had paid \$5 billion to  
11 Chase and paid that to the Fed, the Fed  
12 released \$5 billion worth of collateral, what  
13 the Fed believed is \$5 billion worth of  
14 collateral to Chase, and that went into the  
15 clearance box and settlement took place.

16 **Q. Okay. And then so then what  
17 collateral was ultimately transferred to  
18 support the Barclays repo?**

19 A. There are schedules that show that  
20 collateral. So again, collateral that was  
21 eligible under the repurchase agreement was  
22 delivered. The remaining securities that came  
23 back from the Fed, some portion of them, again,  
24 subject to operational friction and  
25 eligibility, were then delivered to Bank of New

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2 York.

3 **Q. And were you involved in that**  
4 **process of the delivery to Bank of New York?**

5 **A.** My team were actively involved. I  
6 was doing very many different things at that  
7 time, so Monty Forrest and Jim and the team of  
8 people within the repo ops area in conjunction  
9 with the treasury department and with the  
10 trading desk, the financing trading desk, were  
11 all working hard to get that. I was being  
12 asked also questions by my management and  
13 whether these things were happening. I was  
14 also liaising with Barclays when -- certainly  
15 when the first 5 billion -- we were trying to  
16 do it in 5 billion pieces so there was no  
17 daylight exposure to Lehman. That mechanism  
18 resulted in the outcome I described before,  
19 which was some leakage, because of Chase's  
20 method -- Chase's internal operational issues,  
21 and so there was some discussion, but it went  
22 very quiet for a period of time until the 40  
23 billion of cash was paid by Barclays or the 45  
24 billion of cash was paid by Barclays, and then  
25 settlement took place with the Fed and DTC.

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2 Settlement processes were kept open until the  
3 early hours of the morning, which is  
4 unprecedented, to allow this massive volume of  
5 collateral to work its way through the system  
6 and settle.

7 **Q. You mentioned someone named Jim. Is**  
8 **that Jim Hraska?**

9 **A.** Jim Hraska.

10 **Q. Is it fair to say he was more mired**  
11 **in the details of this transfer of collateral**  
12 **than you were?**

13 **A.** Absolutely. He is an industry  
14 expert in the space. The Fed consult with Jim,  
15 so he is expert in this process.

16 **MR. HINE:** Okay. Why don't we take  
17 a break now. I have some documents to show  
18 you about this whole topic, so you need to  
19 rest up.

20 (Recess was taken from 10:31 to  
21 10:42.)

22 **BY MR. HINE:**

23 **Q. Mr. Blackwell, we were talking about**  
24 **the transition from the Fed repo arrangement on**  
25 **Wednesday to the replacement transaction with**

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2 Barclays and BONY on Thursday.

3 Before we get into how that took  
4 place and any problems that had to do with  
5 that, could I just run a couple documents by  
6 you just so I can understand what's being said  
7 in these e-mails to the extent you remember. I  
8 know you had several e-mails during that period  
9 of time, but let's just start with this one.

10 **MR. HINE:** Let's mark that.  
11 (Exhibit 58 B, e-mail dated  
12 September 17, 2008, Bates stamped 77752,  
13 marked for identification.)

14 (Exhibit 59 B, e-mail dated  
15 9-17-2008, marked for identification.)

16 **Q. Mr. Blackwell, I handed you an**  
17 **e-mail which we have marked as Exhibit 58 B**  
18 **which is an exchange between you and some other**  
19 **folks on Wednesday, September 17th, and some**  
20 **earlier e-mails below.**

21 I just wanted to understand  
22 what's -- you appear to be congratulating some  
23 folks here about doing a good job. In one of  
24 the e-mails Mr. Feraca talks about yielding the  
25 max from both PDCF and Barclays financing.

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2 Could you just give me a sense of --  
3 was this a difficult effort to get this  
4 financing in place on Tuesday?

5 **A.** I think it was hard all week. It  
6 was a very challenging environment to be  
7 operating in, to say the least. I just think  
8 John as the person responsible for financing  
9 and I think it's just congratulating everyone  
10 for -- under the construct of the agreement to  
11 delivering an excellent result and just  
12 thanking people. I have no more information  
13 about this than that.

14 **Q. My question is this was a Tuesday**  
15 **night e-mail, the one in the middle. Now, the**  
16 **PDCF, that's referring to the Fed's financing;**  
17 **correct?**

18 **A.** The Primary Dealer's Credit  
19 Facility.

20 **Q. That's a Fed program?**

21 **A.** Fed facility, yes.

22 **Q. Now, it also refers to Barclays**  
23 **financings in the same sentence.**

24 What financings does Barclays have  
25 in place on Tuesday?

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A. I don't recall. I'm assuming it's referring to a repo, but I have no idea.

MR. SHAW: Bill, just so it's clear, although the date that appears on the sent line says Wednesday, September 17th, it's Greenwich meantime, so it's also Tuesday.

MR. HINE: You are right.

**Q. I guess my main point for that document is you don't really have any knowledge of other of Barclays' financings on the Monday, Tuesday, Wednesday of that week?**

A. Correct.

**Q. So your role during that week with respect to Barclays' financing was the one that was put in place on Thursday to replace the Fed financings of Wednesday night; is that right?**

A. Yes.

**Q. Okay. If you could turn to the next document, which is marked as Exhibit 59 B, again, it's an e-mail stream involving yourself and others. It talks in the bottom about not doing the Barclays PDCF trade tonight. Do you see that language?**

A. Yes.

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**Q. Now, this is Wednesday night, and I believe you previously testified, was there a discussion of possibly doing that transition transaction on Wednesday night?**

MR. SHAW: Objection to form. It's not clear to me what the "this is Wednesday night" refers to.

MR. HINE: Let me just rephrase it.

**Q. You see the e-mail at the bottom of this document which is sent says it's sent on Wednesday, September 17th. Do you see that?**

A. Yes.

**Q. And the first line of that e-mail says "we are not doing the Barclays' PDCF trade tonight." Do you see that?**

A. I do.

**Q. And that's Mr. Ullman sending that e-mail to you; correct?**

MR. SHAW: Can I just note for the record the witness is underlining the phrases you have pointed out to him on the exhibit.

MR. HINE: Okay.

MR. SHAW: I'm not allowed to do

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that, I take it.

MR. HINE: Probably a good idea just to --

THE WITNESS: It's a habit.

MR. HINE: Okay. Not a problem.

**Q. My question was what discussions were there about possibly having the Barclays take over this financing role from the Fed on Wednesday night?**

MR. SHAW: Objection. Foundation.

**A. I don't have any -- I wasn't involved in those discussions, so -- you would probably -- yeah, I wasn't involved in those discussions.**

**Q. Okay. Continuing on with that e-mail, it says "we will be increasing the tri-party trade we have been doing with Barclays at BONY to 13 billion." Do you see that?**

A. I do.

**Q. What is that referring to?**

A. It refers to the fact that Barclays would be extending financing for that night of 13 million.

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**Q. So this is a separate tri-party that Barclays has with Lehman and BONY?**

A. The same tri -- they are a tri-party. A tri-party agreement is one tri-party agreement. So this is an arrangement where Barclays are providing cash in return for securities.

**Q. Okay. So the 13 billion refers to the amount that's apparently needed to get through that night or to get into the next day; is that right?**

A. Or that was the available collateral. I don't know why 13 billion was 13 billion, but that was the transaction that was done.

**Q. Could you just -- what is your understanding of why Barclays did not affect this transaction on Wednesday as opposed to Thursday?**

A. My understanding was that it wasn't the case of Barclays -- it wasn't the case that Barclays didn't want to. It was technically un -- it wasn't feasible to actually put a mechanism in place to allow that transaction to

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2 happen.

3 Q. Okay.

4 A. Because of the scale and complexity.

5 Q. So why was it possible to do that on  
6 Thursday?

7 A. Because a mechanism was put in  
8 place.

9 Q. So you folks had been working on  
10 putting this mechanism in place previously?

11 A. No, that day. So it was -- when --  
12 on the Wednesday, then through Wednesday  
13 through Thursday there was a mechanism put in  
14 place.

15 Q. As to the collateral that was  
16 originally supporting the Fed, and you  
17 described that some of it made it to Barclays  
18 but there were issues as to that transfer, did  
19 you have any role in placing a value on that  
20 collateral?

21 A. Operations are not placing a value  
22 on the collateral. The systems that operations  
23 use have a value associated with them, so not  
24 figuring out that this equity or this bond is  
25 worth -- we are not marking the security in

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2 that regard. Chase, again, would have primary  
3 role in terms of collateral selection based on  
4 the schedules of the agreement.

5 Q. And did you ever hear any  
6 discussions about a discount or a haircut that  
7 was applied to that collateral?

8 MR. SHAW: Asked and answered.

9 A. No. Not that I recall, no.

10 Q. Okay. What do you understand the  
11 term "haircut" to mean with respect to repos  
12 generally?

13 MR. SHAW: Objection. Foundation.

14 A. I would -- I'm not an expert in  
15 terms of that process, so, again, commercial  
16 components would be agreed by the business.

17 Q. Could you describe for me -- well,  
18 let me just ask about two other documents  
19 before we go further.

20 (Exhibit 60 B, e-mail dated  
21 9-18-2008, marked for identification.)

22 Q. Mr. Blackwell, I am handing you a  
23 copy of the document marked as Exhibit 60 B,  
24 which is an e-mail stream which appears to be  
25 dated September 18th, 2008, and attached to it

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2 is a spread sheet of some sort. I know that --  
3 I don't see your name on this e-mail, but I  
4 wanted to ask you about the spread sheet that's  
5 attached.

6 Have you ever seen a spread sheet  
7 like this?

8 MR. SHAW: Objection. Form.

9 A. It's possible I have seen one. I  
10 don't recall seeing one, but it's a schedule of  
11 collateral values. It's being provided by -- I  
12 assume this is being provided by JPMorgan.

13 Q. Why do you say that?

14 A. Because of who it's being sent from.

15 Q. The title of the spread sheet says  
16 BONY Transaction Anticipated Pre Funding. Do  
17 you have any idea what that could mean?

18 A. No.

19 Q. Do you have any idea what the column  
20 to the far right means where it says  
21 Anticipated Pre Funding Dollar Amount?

22 A. Only just the literal interpretation  
23 of the title. It's a valuation.

24 Q. Do you have any understanding of the  
25 value of the different types of collateral that

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2 were posted to the different Fed programs  
3 listed here?

4 A. At the time?

5 Q. Yes.

6 A. Possibly. I mean, I didn't look at  
7 the detail. And, again, the detail is  
8 thousands of CUSIPs. It's meaningless looking  
9 at lists. It does have to be applied based on  
10 the rules.

11 Q. Do you have any understanding of the  
12 aggregate amounts of the collateral you were  
13 trying to transfer?

14 A. I knew we were trying to transfer  
15 \$45 billion. That was the headline number,  
16 approximate number.

17 Q. Is it fair to say there were some  
18 problems in transferring the collateral to or  
19 unexpected issues arose with respect to  
20 transferring the collateral from the Fed  
21 program to the Barclays repo?

22 MR. SHAW: Objection to form.

23 A. There were problems, yes, there  
24 were.

25 Q. Could you just generally describe

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**for me what the problems were and how they resolved themselves or didn't resolve themselves?**

A. The process was designed that Chase would pay -- sorry, Barclays would pay \$5 billion, and I explained this earlier, \$5 billion to -- Barclays would pay that to Chase, Chase would pay that to the Fed, the Fed would deliver \$5 billion in collateral.

MR. BYMAN: Could I ask you to speak a little louder.

THE WITNESS: Okay. Do you want me to repeat that?

MR. BYMAN: If you would, I'd appreciate it.

A. Barclays paid -- my understanding was Barclays paid Chase -- paid Lehman, their tri-party agent, Chase, \$5 billion. \$5 billion was paid to the Fed. The Fed released \$5 billion worth of collateral. Their valuations, not Lehman's valuations, but their valuations based on what had been pledged the previous night. That collateral came into Chase's box and was not delivered to BONY, to

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Bank of New York.

**Q. To satisfy other transactions that you mentioned earlier?**

A. Yeah, and I don't have visibility over what those transactions were.

**Q. So was this -- could you just kind of relay what you tried to do to resolve this issue?**

A. I didn't try and resolve the issue. A team of people that were managing it for me, Monty, the global head of that function, and Jim worked hard with treasury and my settlements team as well to try and resolve that issue, but it was mainly a dialogue with Chase, the Fed, and there was an open line in place that was being managed out of Jim's office.

**Q. Okay. And were you -- when you say "open line," what do you mean by that?**

A. Open conference -- a phone line that every participant could dial into.

**Q. And did you participate in that conference call?**

A. I may have been on it briefly, very,  
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very briefly. I wasn't sitting in that room. I was in and out.

**Q. Is it fair to say that Jim Hraska or the other individual you mentioned are the ones that have in-depth knowledge of how this problem was addressed?**

A. Jim Hraska.

**Q. Okay. Do you have an understanding of whether the full compliment of collateral that Barclays was expecting to be posted to their repo ever made it to Barclays?**

A. I don't believe the full value made it, no.

**Q. Do you know what amount did not?**

A. Exact numbers, no, but the full amount did not make it.

**Q. Do you have approximate numbers?**

A. Off the top of my head, I don't. It would be in an e-mail, but it wasn't the complete amount.

**Q. Is there a \$7 billion number that -- does that sound like the approximate amount?**

A. There was a cash repo that I understood that was put on for 7 billion that

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night as well which was pledged to Barclays to make up some of the shortfall.

**Q. Okay. Did that money go to Barclays?**

A. I understand that it did or should have done, but it was held properly -- I don't know. Actually, I don't want to misspeak. It's probably in my -- again, it would be in my e-mail.

**Q. And when you said put in place, that was Thursday night?**

A. Overnight Thursday, yes, into the early hours of Friday.

(Exhibit 61 B, e-mail dated 9-17-2008, marked for identification.)

**Q. Mr. Blackwell, I am handing you a document that's been marked as 61 B, which is an e-mail stream dated September 17th, 2008, and the subject line reads "key points from today's call with Alastair pertinent to equities."**

**My question to you is have you ever seen this document?**

A. I would have seen it in my -- I was  
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2 unfamiliar with. Post of the event, yes, it's  
3 something I became aware of.

4 **Q. Since you have been at Barclays you**  
5 **have seen it?**

6 A. Yes, I don't know whether I have  
7 seen it, but I am aware of its existence.

8 **Q. And what's your understanding of**  
9 **what that Clarification Letter did with respect**  
10 **to the transaction?**

11 MR. SHAW: Foundation.

12 A. I actually don't know. I really --  
13 I don't know. I know a Clarification Letter  
14 exists and I don't recall reading it. It's  
15 been referred to. That's all.

16 **Q. Do you have any understanding of the**  
17 **two schedules that are attached to the**  
18 **Clarification Letter, which are called**  
19 **Schedules A and B?**

20 A. I am aware of Schedules A and B,  
21 yes.

22 **Q. What are you aware of about them?**

23 A. Schedule A is the original repo  
24 transaction, the original Fed repo transaction,  
25 the assets are transferred to BONY. Schedule B

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2 **was unencumbered assets within the clearing**  
3 **boxes.**

4 **Q. Just so I understand that, we have**  
5 **been talking about the Fed repo which was**  
6 **replaced by a Barclays repo and those -- that**  
7 **collateral was to comprise Schedule A; is that**  
8 **right?**

9 MR. SHAW: Objection to form.

10 A. My understanding is Schedule A was  
11 the collateral that made it to Barclays. Now,  
12 in a normal repo process there is substitution  
13 and change, so it doesn't always work, it's not  
14 always going to be precise, and that's just  
15 reality. Every single repo that would be  
16 processed would be different.

17 **Q. So your understanding was that the**  
18 **collateral that was posted to the Barclays repo**  
19 **was to become -- was to be included in**  
20 **Schedule A?**

21 MR. SHAW: Objection to form.

22 MR. HINE: You can answer.

23 A. I think that would be my  
24 understanding.

25 **Q. And is this an understanding that**

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2 **you had during that weekend or is this**  
3 **something you developed later?**

4 A. Afterwards. I didn't spend any time  
5 in terms of reconciling -- as an operations  
6 organization we are reconciling and there was a  
7 transfer of information between the parties  
8 that would share information and Chase stopped  
9 providing us with information on the Friday  
10 morning, so we had no visibility over what was  
11 going on there, but we did compare what had  
12 transferred between Barclays and Lehman to  
13 ensure that we were reconciled, and seen there  
14 a very small difference of -- what we had  
15 recorded on our books was less than  
16 \$30 million. So it was an accurate reflection  
17 of what transferred. Or our books are an  
18 accurate reflection of what transferred.

19 **Q. How about Schedule B, did you have**  
20 **any role with respect to Schedule B over that**  
21 **weekend?**

22 A. Yes. I mean, over the course of the  
23 weekend my team were working with treasury to  
24 refine a list of unencumbered assets sitting  
25 within the clearance boxes.

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2 **Q. And why were you doing that?**

3 A. Because I was asked to do it.

4 **Q. Did you have any understanding as**  
5 **part of the transaction why that was being**  
6 **done?**

7 A. That was part of -- all I had was  
8 there was negotiations going on and I was asked  
9 to find -- to identify a set of securities that  
10 were unencumbered in the clearance box.

11 **Q. Did you have any understanding about**  
12 **that being used to fill some shortfall in the**  
13 **assets that were supposed to have been**  
14 **transferred to Barclays?**

15 A. I didn't know why precisely, so no.  
16 What I was trying to do was mechanically create  
17 a list or assist in mechanically creating a  
18 list of assets that were unencumbered.

19 **Q. And when you say "unencumbered,"**  
20 **what does that mean in that context?**

21 A. Unencumbered means there was a  
22 methodology applied which would be firm --  
23 predominantly firm inventory or assets that  
24 were available to be re-hypothecated.

25 **Q. And were you only looking in the**

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**clearance boxes at DTC?**

A. We were looking -- we looked at Euroclear. We looked in several places.

**Q. Could you just tell me the places you looked.**

A. From memory, I think it was Canada, the Canadian depo, DTC, and Euroclear. Two -- I think two boxes at DTC and a physical box at Chase, I think. Again, this is -- I may not be a hundred percent precise, but those depots would be the primary locations.

**Q. When you say "we looked," can you describe for me is this -- when did you start looking?**

A. I think there was an ongoing process over the course of the weekend. I don't know when precisely. Again, I think you will find I was actually in the office all of the night on Thursday, so Thursday, Friday became one day and all that time I don't have an exact recollection of when that happened.

**Q. Okay. But is it fair to say it was sometime at end of the week, it wasn't an effort started Monday or Tuesday?**

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A. Oh, absolutely not.

**Q. And did you look at the OCC as well?**

A. Possibly. I can't comment on that.

**Q. Just for my own, I see reference to an 074 box and then a 636 box. Could you explain to me the difference between the two?**

A. The 074 box is predominantly an equity clearing box, DTC clearing box, and -- sorry, 626 box?

**Q. 636.**

A. 636 is predominantly corporates, corporate bonds.

**Q. I see something else referred to as a non-actionable box. Is that a term you are familiar with?**

A. Yeah. The non-actionable box, I believe, was the list of securities that we thought were -- some securities are actionable, some securities are not. Securities that are customer assets, for instance, you wouldn't -- they are not unencumbered, they are fully-paid-for customer assets, so that's the difference between the two.

**Q. Now, when you did this effort over**

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**the weekend to assemble these assets that were to go into Schedule B, did you know there was going to be a Schedule B or were you shooting towards that goal?**

MR. SHAW: Objection to form.

**Q. Bad question, but you can still answer it.**

A. I was creating a schedule. I didn't know what it was going to be called, what it was going to be used for. Again, I was working with a very large group of people to produce this, so...

**Q. I guess I was asking did you know the term "Schedule B" or that it was going to be a schedule to a Clarification Letter at that time?**

A. I didn't know it was going to be a schedule to a Clarification Letter. It may have been labeled as Schedule B, but, again, I didn't know its purpose.

**Q. Fair to say you were not involved in any of the court proceedings in the bankruptcy?**

A. No.

**Q. Is it fair to say that you didn't**

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**help prepare documents that were filed in any of the courts?**

A. Not directly, no.

MR. SHAW: I think we had a slight ambiguity. I believe you asked is it fair to say he was not involved and he said no, but I think the intent was --

MR. HINE: Let me just ask it again.

**Q. Were you ever involved in preparing documents that were to be filed in the bankruptcy proceeding in this case?**

A. I prepared documents for my management which would invariably -- some content of that would have gone into the bankruptcy proceedings.

**Q. Is it fair to say that you were not involved in preparing the Clarification Letter and its schedules that were ultimately filed with the court?**

A. I certainly didn't prepare the letter, but there may have been data that came from -- that I contributed to that were part.

**Q. Let's get back to this effort to locate unencumbered assets.**

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How many assets did you locate?

What's the value of the assets that you located, if you recall?

A. I think it was -- initially it was about -- it was over \$2 billion, but there was Lehman paper within there, so it's difficult to put a value on that, so...

Q. And who places the value on those assets?

A. Normally that would be model driven, so the finance organization would place a value on it or a third-party source.

Q. And is it fair to say that your operations group did not place the value on those assets?

A. That's fair.

Q. I apologize for jumping back to the Schedule A and the repo, but as to the valuation of the assets that are posted as collateral for the Barclays repo, we see reference in some of the documents to BONY placing a value on them. Why is BONY placing a value on those assets?

A. Because they are Barclays' tri-party

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agent. You would expect them to place a value on the collateral that they received.

Q. And is that valuation that's different or was different than the valuation that Lehman had placed on those assets?

MR. SHAW: Objection. Foundation.

A. I believe it was different by -- I'm not sure the exact amount.

Q. Do you recall any discussions about the difference between those two values?

A. I didn't have any of those discussions, so no, I don't recall those discussions.

Q. That would not fall within the operation group's purview generally?

A. Jim may have had conversations with them, with Bank of New York, Chase and the Fed at that time, but he would be the right person to ask.

Q. So is it fair to say you would not have intimate knowledge of BONY's valuation of those assets?

A. No, I wouldn't.

MR. HINE: I want to show you

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another document.

(Exhibit 62 B, e-mail dated September 17, 2008, Bates stamped 10293351, marked for identification.)

Q. Mr. Blackwell, I am handing you a copy of a document marked 62 B, which is an e-mail between Mr. Ullman and yourself on September 17th, 2008.

Have you ever seen this document before?

A. I would have thought so, yes.

Q. Can you just take a minute and review it and see -- my question to you is going to be what is Mr. Ullman being cynical about or concerned about?

MR. SHAW: Objection. Foundation.

A. I don't know exactly what's going through his mind, but I think you can see from the e-mail that he has uncertainty about we don't know the terms of a deal and he is speculating about -- he is speculating about what is going on. That is all. I have no idea why he thought this. You would have to ask him.

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Q. Do you have any recollection of discussing this issue with him or anyone else?

A. No. I didn't have time to discuss conjecture and speculation at that point in time. I was purely doing my function as much as I possibly could.

MR. HINE: I want to show you another document.

(Exhibit 63 B, e-mail dated September 19, 2008, Bates stamped 10294630, marked for identification.)

Q. Mr. Blackwell, I am handing you a document marked as Exhibit 63 B, which is an e-mail stream involving yourself from the period September 19th, 2008 dating back to the prior date, September 18th. I don't have many questions about this document.

What I really want to ask you about is I see a series of documents like this, e-mails, discussing fails, so I just want to understand what fails are and how they related to what you were doing at this point in time.

A. I think there were a lot of questions being asked about the clearance

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2 Saturday or Sunday, but it was over the  
3 weekend.

4 **Q. So in the end did Barclays end up**  
5 **getting the fails?**

6 A. No. Barclays did not take  
7 responsibility for the clearance box, just the  
8 unencumbered assets sitting in the clearance  
9 box.

10 **Q. Okay. I am not trying to put words**  
11 **in your mouth. So you were able or your team**  
12 **was able to take certain unencumbered assets**  
13 **out of the clearance box and somehow it was**  
14 **transferred to Barclays, just those assets?**

15 MR. SHAW: Objection.

16 Mischaracterizes prior testimony.

17 A. I made a schedule of unencumbered  
18 assets and in the following week there was  
19 discussion with the trustee of LBI to move some  
20 assets and some assets did move based on that  
21 schedule.

22 **Q. Okay. And those were unencumbered**  
23 **assets?**

24 A. Unencumbered assets.

25 **Q. So just so I understand, that would**

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2 **not have included the fails?**

3 A. Does not include the fails. Now, I  
4 want to clarify one point here as it relates to  
5 PIM, because PIM was the private investment  
6 management business. That hadn't transferred  
7 at that point. Assets did transfer  
8 subsequently and the PIM business doesn't have  
9 any fails either, its contractually-settling  
10 business, so it's a non-fail environment. So  
11 the full set of customer assets are in the  
12 customer accounts.

13 MR. HINE: Let's mark this.

14 (Exhibit 64 B, e-mail dated  
15 9-18-2008, marked for identification.)

16 **Q. Mr. Blackwell, I am handing you a**  
17 **document marked as Exhibit 64 B, which is an**  
18 **e-mail between yourself and Mr. Eickbush dated**  
19 **September 18th, 2008 and it references in the**  
20 **subject line something called a fails call, and**  
21 **I believe this is the topic we have just been**  
22 **discussing?**

23 A. I'm sorry, what day is this?

24 **Q. Upper right-hand corner says**  
25 **September 18th.**

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2 A. Okay, yes.

3 **Q. Do you have any recollection of that**  
4 **fails call?**

5 A. I don't think Greg was on that call.  
6 I have a recollection of a call with the  
7 Barclays lawyers on that -- I think over that  
8 night, so that's the Thursday night. Again, we  
9 were trying to ascertain the value and the  
10 number of fails and, again, it's sort of  
11 pertaining to taking control of the box or just  
12 taking the inventory.

13 **Q. Okay. And do you recall anything**  
14 **else about that call?**

15 A. I provided data, which is, again, in  
16 my e-mail, which was provided to the Weil  
17 lawyers as well, and that was the end of the  
18 discussion. I think we spoke to Bart and just  
19 told him what we had done and that was it and  
20 that was the end of the issue until the  
21 weekend.

22 **Q. I see the use of a phrase in this**  
23 **e-mail "cherrypicking of assets." Do you see**  
24 **that?**

25 A. Yeah. I don't -- he wasn't on the

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2 call, so this is conjecture and speculation on  
3 his part. I don't know. You would have to ask  
4 him why.

5 **Q. Does that phrase have any meaning to**  
6 **you in this context?**

7 A. I think the latter part of that  
8 sentence makes more sense. I think what he is  
9 saying is, my interpretation of this, and you  
10 should ask Greg for his perspective, would be  
11 that the unencumbered securities within the box  
12 are part of any transaction potentially, and,  
13 again, he wasn't party to any deal details or  
14 nor was I, so this is his speculation, so he is  
15 speculating that it's unencumbered assets.

16 (Exhibit 65 B, e-mail dated

17 September 19, 2008, Bates stamped 10298087,  
18 marked for identification.)

19 **Q. Mr. Blackwell, I am handing you a**  
20 **copy of an exhibit marked 65 B, which is Bates**  
21 **stamped 102 -- not Bates stamped, but it's**  
22 **marked with numbers at the bottom 10298087**  
23 **through -- well, actually, they are all marked**  
24 **087, but it appears to be an e-mail stream from**  
25 **September 19th in which you are one of the**

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2 **Q. Do you recall anything else about**  
3 **that conversation?**

4 A. No, not really apart from -- I  
5 really don't -- I don't even know what I was  
6 talking about, to be honest. I don't know what  
7 the subject of the conversation was about, but  
8 it was some piece of data that I handed over  
9 and -- or something of that nature. I really  
10 can't recall.

11 **Q. At the very top you talk about what**  
12 **they bought. Do you see that phrase?**

13 A. Yes. I didn't know.

14 **Q. You didn't know what they bought?**

15 A. No.

16 **Q. My question was is there push-back**  
17 **from Barclays during this period of time about**  
18 **the assets that they thought they bought but**  
19 **they are not getting?**

20 MR. SHAW: Objection to form.

21 A. I wasn't having conversations with  
22 Barclays about what assets. I was doing my  
23 task. I didn't know what the deal was, so I  
24 don't know. In terms of data that was being  
25 shared, I was sharing information with my

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2 management and attending in meetings at 745  
3 with people and that was happening constantly  
4 24 hours a day pretty much, so I don't recall  
5 what it's specifically referring to.

6 **Q. Okay. I understand you weren't in**  
7 **conversations with Barclays, but do you recall**  
8 **any just general scuttlebutt or your general**  
9 **understanding about Barclays pushing back as to**  
10 **the assets they thought they were buying?**

11 A. The only thing I recall was the  
12 clearance boxes and there are obviously assets  
13 that fall under the Fed repo, but that was  
14 before this point, fall under the Fed repo that  
15 would not be eligible as collateral to be  
16 delivered to -- as part of a regular repo,  
17 because the Fed takes lower-quality assets, but  
18 that's standard commercial terms.

19 **Q. The Fed takes lower-quality assets**  
20 **than a repo between private parties?**

21 A. Yes.

22 **Q. That's pretty standard?**

23 A. The PDCF was created to create  
24 liquidity for that very purpose, to allow  
25 poorer quality assets to be lent so that it

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2 would create liquidity in the market.

3 **Q. And does the Fed get a bigger**  
4 **haircut or discount as to the collateral that's**  
5 **posted for those?**

6 A. I'm not sure.

7 **Q. You are not sure?**

8 A. I'm not sure.

9 (Exhibit 69 B, e-mail dated  
10 September 19, 2008, Bates stamped 93219,  
11 marked for identification.)

12 **Q. Mr. Blackwell, I am handing you a**  
13 **document which is marked as 69 B which is an**  
14 **e-mail stream taking place on Friday the 19th.**  
15 **You are involved in this stream.**

16 My question has to do with the part  
17 of it that's on the second page. Please take  
18 your time to look at it.

19 (Document review.)

20 A. Okay.

21 **Q. In that e-mail -- have you had a**  
22 **chance to review the document?**

23 A. Yes.

24 **Q. In the e-mail that I am referring**  
25 **to, which is between Mr. John Palchynsky and**

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2 Mr. Hraska and others, CC'd to you on the 19th  
3 at 3:57 p.m., he discusses seven -- "as per  
4 Barclays' request, 7 billion cash was allocated  
5 to their lock-up last night. If securities  
6 were/can be used instead, that would free up  
7 margin collateral by reducing the amount of  
8 higher haircut securities allocated to the JP  
9 Chase Bank loan."

10 **Could you explain to me what that**  
11 **means, if you understand it?**

12 MR. SHAW: Objection. Foundation.

13 A. The technical experts would be  
14 better to explain this to you. I think that  
15 would be -- I can make an attempt to explain it  
16 to you, but I think --

17 **Q. Do you have an understanding of what**  
18 **it means? I understand you are not the**  
19 **technical expert.**

20 A. Just almost literally that 7 billion  
21 of cash, collateral, the loan I think was  
22 referred to earlier where securities were  
23 pledged to Chase as a loan and 7 billion of  
24 cash was pledged to Barclays. That 7 billion.  
25 And I think John is referring -- John

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2 orders for that weekend, which are 15C3 and the  
3 unencumbered securities in the clearance boxes.

4 **Q. Can you tell me what you recall of**  
5 **the 15C3 securities you just mentioned?**

6 MR. SHAW: Is this a logical time to  
7 take our lunch break?

8 MR. HINE: Yes. Do you want to  
9 break for lunch? Okay. Sounds good.  
10 (Lunch recess was taken at 12:30.)  
11  
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2 (Time noted: 1:14.)  
3 A L A S T A I R B L A C K W E L L,  
4 resumed as a witness, was examined and  
5 testified as follows:

6 CONTINUED EXAMINATION BY  
7 MR. HINE:

8 **Q. Good afternoon, Mr. Blackwell.**

9 A. Good afternoon.

10 **Q. Hope you had a good lunch. We have**  
11 **some more talking to do here, unfortunately for**  
12 **you. I think we had left off with -- we had**  
13 **mentioned 15C3.**

14 **Could you just explain to me what**  
15 **you were doing over that weekend as far as**  
16 **trying to locate assets in 15C3 accounts? And**  
17 **I meant the weekend of the 20th, 21st.**

18 A. I wasn't trying to locate assets in  
19 15C3.

20 **Q. Okay. What were you trying to do**  
21 **with respect to 15C3 accounts?**

22 A. It isn't an account. It's not an  
23 account. It's a calculation that historically  
24 was run once a week and is designed for  
25 customer protection. It's a regulatory

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2 requirement you run this calculation and what I  
3 was doing was trying -- working in conjunction  
4 with the people that were responsible for  
5 producing that, which is the finance  
6 organization, was to rerun a calculation.

7 **Q. And why did it need to be rerun?**

8 A. To come up with -- I was asked to  
9 come up with what is the number, what is the  
10 sum, basically, run the calculation and come up  
11 with a number. That is the 15C3 calculation.

12 **Q. Okay. And then what was to be done**  
13 **with that calculation once you did it?**

14 A. Provide it to the -- my supervisors  
15 and for them to have an understanding of what  
16 that number was.

17 **Q. Did you have any understanding of**  
18 **how that calculation related to the transaction**  
19 **that was going on between Barclays and Lehman?**

20 A. In terms of -- running the  
21 calculation was to find out whether -- what the  
22 calculation was, come up with a number.

23 **Q. And did you have any understanding**  
24 **of what your superiors were going to do with**  
25 **that number once you gave it to them?**

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2 A. Compare that to what was locked up  
3 as cash to -- cash and securities to protect  
4 customers.

5 **Q. And am I correct if that calculation**  
6 **yielded a number that was lower than what was**  
7 **previously locked up, that would release some**  
8 **assets to Barclays; is that right?**

9 MR. SHAW: Objection. Foundation.

10 A. It would mean there is an excess.  
11 It would mean there is an excess of cash locked  
12 up or securities locked up as part of customer  
13 protection.

14 **Q. And why were they trying to find out**  
15 **whether there was an excess?**

16 MR. SHAW: Objection. Foundation.

17 A. I was asked to go recalculate the  
18 numbers, so I worked with the finance people  
19 who own the calculation as a whole, operations  
20 are an input to some of the lines in the  
21 calculation and we work towards creating that.

22 **Q. And who at finance are charged with**  
23 **doing this calculation?**

24 A. At the time, Tony Stucchio, Anthony  
25 Stucchio, who reported to Martin Kelly.

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2 (Exhibit 74 B, e-mail dated  
3 9-20-2008, marked for identification.)  
4 **Q. Mr. Blackwell, I am handing you a**  
5 **copy of a document marked as Exhibit 74 B,**  
6 **which is an e-mail stream dated September 20th,**  
7 **2008 involving yourself and several others**  
8 **including Ian Lowitt and some of your people in**  
9 **your group. I think I am mixing two concepts**  
10 **here, so I just want to get some clarification**  
11 **on what we have just been talking about after**  
12 **you have had a chance to look at the e-mail.**

13 (Document review.)

14 A. Okay.

15 **Q. Have you had a chance to look at it?**

16 A. I have.

17 **Q. Could you tell me what you recall**  
18 **about this discussion that's embodied in this**  
19 **e-mail?**

20 A. It's just a -- it's a list of things  
21 that we were working on. It's two things that  
22 we were working on. Looking for the  
23 unencumbered -- trying to define a list of  
24 unencumbered assets, and what it's saying here  
25 is that 15C3, if there is excess, and that

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2 potentially there is money that can be released  
3 as an unencumbered asset of the firm.

4 **Q. I think I understand what you said.**  
5 **I just want to make sure.**

6 This is during a period of time when  
7 your group is trying to locate unencumbered  
8 assets which would then presumably be  
9 transferred to Barclays for whatever purpose?

10 A. Right.

11 MR. SHAW: Objection. Foundation.

12 **Q. And I see here mentioned the goal is**  
13 **1.9 billion. Do you see that?**

14 A. Yes.

15 **Q. Who set that goal or where did that**  
16 **goal come from?**

17 A. Ian is saying guys, we need 1.95  
18 billion.

19 **Q. Okay. Ian is after the below**  
20 **e-mail; right? The e-mails are from the bottom**  
21 **up in sequence?**

22 A. Yes. It would have come from Ian or  
23 Paolo.

24 **Q. Do you recall any discussions about**  
25 **why we need 1.9 billion in unencumbered assets?**

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2 A. Again, people closer to the deal  
3 were negotiating whatever they were  
4 negotiating. I was being asked to carry out an  
5 action. I have a goal. Find 1.9 billion of  
6 unencumbered assets.  
7 **Q. I just want to make sure, you were**  
8 **not involved in the setting of that goal or --**  
9 **am I correct to say you don't have any**  
10 **knowledge of why that number was passed down to**  
11 **you?**

12 A. I haven't -- no, I don't have  
13 knowledge.

14 **Q. And now as I read this e-mail, the**  
15 **bottom e-mail is Monty Forrest reporting on**  
16 **some of the efforts to find unencumbered**  
17 **assets; correct?**

18 A. Yes.

19 **Q. Okay. And as we get to the upper**  
20 **e-mail, Ian says he really needs 1.95 billion;**  
21 **is that right?**

22 A. Yes.

23 **Q. But I don't understand what he means**  
24 **by a shortfall in the 15C3 lock-up release.**  
25 **Can you explain that?**

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2 A. I don't know exactly -- the way I  
3 would interpret this would be if he is looking  
4 for -- if the target is to find 1.95 billion of  
5 unencumbered securities, then -- if there is no  
6 excess in the 15C3 or there is an excess, we  
7 don't know at this point, because we haven't  
8 rerun the calculation, then potentially finding  
9 more unencumbered assets because you wouldn't  
10 take -- if it is not an excess, you can't take  
11 it, so it's a sum.  
12 **Q. Is it correct to say he is asking**  
13 **for a little more in the assets in case there**  
14 **was no excess in 15C3, but actually there was a**  
15 **shortfall --**

16 MR. SHAW: Objection. Foundation.

17 **Q. -- in 15C3? Is that right?**

18 A. No, I wouldn't interpret it like  
19 that. I think he is saying find -- review --  
20 we are not looking for assets that aren't  
21 there. We are going through a process in a  
22 very methodical way based on a set of -- an  
23 understood approach which are under the rules  
24 that we would apply to our depots, to the boxes  
25 of Lehman Brothers, to find unencumbered

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securities based on those rules to come up with a list. The data that we had, because Chase had failed to send files for a period of time, was incredibly difficult to work with.

Broker/dealer systems aren't run -- aren't used to running over a weekend, they work on a five-day week normally, so trying to create this data was difficult. So we are combing through the data to create a list of unencumbered assets. We are recalculating the 15C3 to see what the segregation -- what the lock-up requirement would be, on a hypothesis that as customer assets had left Lehman Brothers, then the requirement for a lock-up would be reduced, so that would create an unencumbered asset. So we weren't looking for things that weren't there. We were looking for things that were there based on the challenge -- very challenged and uncertain data that we had.

**Q. I think I understood what you just said, but did you mean that over the previous week presumably customers had left Lehman and that would reduce the requirement for the 15C3**

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**lock-up or reserve?**

A. That was a hypothesis.

**Q. And you were doing the calculation to test that hypothesis?**

A. Yes.

**Q. Did it prove to be correct?**

A. I don't know what conclusion we ultimately reached, because the data was so challenging we didn't reach a conclusion that weekend.

**Q. So do you know if there was an excess in the end?**

A. I don't. I don't recall whether there was an excess or not.

**Q. When you say the data was so -- what data are you talking about?**

A. Stock record data. Books and records of the firm are dependent on several data feeds; trade data -- new trade data that comes from the front office, external trade data, so repo, for instance, coming from Chase, these are all of the trades -- securities we have pledged, I need that data, that needs to be fed in, and then you carry out third

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world -- a third-party check of your depos versus the outside world, so your custody information. We had partial information around repo coming back in and we had no visibility over our depo at Chase, because they had removed access to their systems, so we couldn't operate in the normal course of business.

**Q. Depo means deposit?**

A. Depo means like a clearing box. I would use that term interchangeably.

**Q. And why had Chase cut off this data stream?**

A. As a result of the funding activity that is taking place. I believe -- and this is -- I didn't have a conversation with Chase, but they rescinded access. I passed that information on to Paolo and asked him to speak to Chase, because -- he in the end called Chase and they still would not give us access to the systems.

**Q. Did they ever restore access to the system?**

A. Not that I'm aware of.

**Q. Were you party to any of those**

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**conversations between Lehman and Chase about this issue?**

A. No, I was not.

**Q. Do you have any understanding of why they were restricting access to the system?**

A. I believe it's a dispute that they had with Barclays around the financing trades that were put on at that point.

**Q. Do you have any more detail in your understanding than that?**

A. Just around -- just that.

(Exhibit 75 B, e-mail dated 9-20-2008, marked for identification.)

**Q. Mr. Blackwell, I am handing you a document marked as Exhibit 75 B, which is a similar e-mail stream to the one you previously just looked at marked as sent on September 20th, 2008. It appears to me to be the same e-mail stream, only the last entry is a little different than previously. So my question has to do with the first entry on page 1 after you have had a chance to look at it.**

(Document review.)

A. Okay.

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**Q. Have you had a chance to look at it?**

A. I have.

**Q. In the first paragraph of this e-mail it's mentioning an 8:00 call and it appears to relay certain groups of assets and eventually there is a line that says the total is 2.181 billion. Do you see that?**

A. I do.

**Q. Are these the assets that your group identified as unencumbered assets?**

MR. SHAW: Objection. Vague as to time.

**Q. Do you have an understanding of what this list of assets is?**

A. I understand what is trying to be shown here, yes.

**Q. Could you tell me what it is?**

A. The team of people, so finance, operations working through the process I described to identify assets on the books and records that were highlighted as inventory, unencumbered inventory, this is the breakdown by clearance boxes.

**Q. I think previously you testified**

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**that there was about \$2 billion in assets that you ultimately identified.**

A. Which is consistent.

**Q. My question for you is do you believe this is pretty close to the end result of your effort to find unencumbered assets?**

A. This was a point in time. That work continued. I can't emphasize enough how challenging the system environments were. Getting information was happening. We had technology teams working through the night to extract data from the systems in a non-standard environment. This is not what we are designed to do and when they were designed to do them, and we weren't getting the third-party feeds we needed to to give us the hundred percent confidence on the data that we had. So there is uncertainty here. So at that point in time there was a call -- I'm not sure that I was actually on that call. I think I was tied up on another issue. But this was the result of that night's work, the overnight work that was done by the technology and operations and finance to come up with that list.

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**Q. Okay. Do you know when that process came to a conclusion?**

MR. SHAW: Objection. Assumes facts not in evidence. Foundation.

MR. HINE: You can answer.

A. It continued. It continued. My team continued working on this to try and identify the unencumbered assets into the early part of the following week.

**Q. So even after the closing it continued?**

A. We didn't have access to data and then we had virtually no access then, so it just stopped. The work stopped.

**Q. When did it stop?**

A. I don't know precisely.

**Q. If you look at this list, there is four different classes of assets.**

**Do you recall any other classes of assets that were identified as being unencumbered other than the four listed here?**

A. No. These were the main buckets. I described these earlier as well.

**Q. Now, when it says "mortgages," do**

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**you see that on number 4? Do you recall any discussions or -- any discussions over that weekend about Barclays getting a greater percentage of the mortgage-based assets than was previously agreed to?**

A. No.

**Q. Is the term resi's used to describe this type of asset, mortgage-based asset?**

A. Possibly. Without seeing the list of securities, I would be speculating.

**Q. Am I correct to say that you were not -- would have no knowledge of discussions between Barclays and Lehman as to the disposition of residential mortgage-based assets?**

A. That's correct. I think there is one point worth mentioning here. You can see even here that Chase are taking assets, again, so we don't know exactly what's in the real world box. That's really showing you the uncertainty of the data.

**Q. And you are pointing to something. Can you just tell me which line you are pointing to?**

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2 **Q. So the 15.8 repo that's mentioned in**  
3 **your e-mail is the HIC loan that you just**  
4 **talked about?**  
5 A. Yes.  
6 **Q. And "Chase want to liquidate," the**  
7 **phrase you use there, that's meant to --**  
8 A. I think that meeting is probably  
9 documented, because I think Hughes Hubbard were  
10 present at the time as well and Weil, so I  
11 can -- there is a lot of information around  
12 that meeting.  
13 **Q. Do you recall anything else about**  
14 **that meeting?**  
15 A. It was -- yeah, there was -- it was  
16 a discussion around the repo transactions,  
17 Barclays' and Chase's position at that point.  
18 **Q. Okay. Do you recall anything other**  
19 **than what you just told us?**  
20 A. That was -- I believe that was the  
21 main thrust. Rich Ricci at the time also  
22 stated that we weren't taking responsibility  
23 for the clearance boxes and that's when I think  
24 the meeting broke up, pretty much broke up, or  
25 was about to break up, but I think I left the  
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2 room.  
3 **Q. Do you have any knowledge of how**  
4 **this issue was resolved ultimately, if at all?**  
5 A. No. Not the 15.8, no.  
6 **Q. Did you have any other follow-on**  
7 **interaction with this 15.8 issue?**  
8 A. No. Just one of the repos that were  
9 on.  
10 (Exhibit 80 B, e-mail dated  
11 September 22, 2008, Bates stamped 464767,  
12 marked for identification.)  
13 **Q. Mr. Blackwell, I am handing you a**  
14 **copy of Exhibit 80 B, which is an e-mail stream**  
15 **dated September 22nd, 2008 in which you are**  
16 **involved, and after you have had a chance to**  
17 **look at it, I have a quick question about it.**  
18 (Document review.)  
19 A. Okay.  
20 **Q. Do you see on the second page where**  
21 **it says -- an e-mail from Mr. Scagnelli where**  
22 **he says "DTC has a free pledge chill on 636,"**  
23 **do you see that?**  
24 A. Yes.  
25 **Q. Can you explain to me what that**  
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2 **means, if you know?**  
3 A. I would interpret that as meaning  
4 that DTC has locked everyone out of the system,  
5 that they are controlling the clearance box at  
6 this point. They are not taking direction.  
7 **Q. Okay. And that --**  
8 A. That means we couldn't do anything.  
9 **Q. Okay. And later on I see your**  
10 **e-mail which says "we need to get to DTC PDQ."**  
11 A. Yes.  
12 **Q. Do you recall what -- did you, in**  
13 **fact, get to the DTC?**  
14 A. Yes. They didn't release anything.  
15 DTC -- I don't think I actually spoke to them.  
16 I don't believe we were in a position to be  
17 able to -- we weren't controlling the box. It  
18 was in the hands of the trustee.  
19 **Q. Okay. And so was there a meeting**  
20 **about this or do you have any knowledge of what**  
21 **happened after this?**  
22 A. No. We didn't -- we ceased to have  
23 any ability to impact the books and records of  
24 LBI. That's my recollection. And this was  
25 just, again, another part of the data issues  
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2 that we were experiencing and probably close to  
3 the end.  
4 **Q. Can you describe for me what your**  
5 **role has been with respect to these assets,**  
6 **these unencumbered assets after the closing,**  
7 **since you have gone to Barclays?**  
8 A. Most of my -- my focus is obviously  
9 trying to get management and structure in  
10 place, so some -- I have been in some meetings  
11 along the way. Jim Hraska has worked probably  
12 most closely with Martin Kelly, Robert Azerad  
13 in the post -- at Barclays to assist. I'd  
14 say -- so it's been limited to the series of  
15 meetings as it relates to these two specific  
16 issues.  
17 **Q. Two issues meaning the unencumbered**  
18 **assets and --**  
19 A. The 15C3.  
20 **Q. And do you have a recollection of**  
21 **what's gone on since the closing as to these**  
22 **issues or --**  
23 A. Again, more on the periphery of what  
24 I have done, I have reviewed methodology to  
25 ensure that I feel comfortable that the  
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2 approach that someone like Monty or Jim has  
3 taken makes sense to me, which it does, and I  
4 feel very comfortable with the methodology  
5 under the terms of the agreement, so where it's  
6 been necessary to have my input, then I have  
7 been involved. So I think we have created  
8 additional schedules since bankruptcy at  
9 Barclays which have been made available, so  
10 that's been the extent of my involvement. And  
11 the 15C3 calculation is rerun every week by the  
12 trustee of LBI.

13 Q. Previously I mentioned that you have  
14 been designated as a 30(b)(6) witness for  
15 select issues in this case by Barclays, so I  
16 just wanted to take a few minutes to address  
17 that issue in this deposition, so for this  
18 portion of the deposition it will be a 30(b)(6)  
19 deposition.

20 Have you ever -- did you review the  
21 30(b)(6) deposition notice that we provided to  
22 Barclays?

23 A. I don't believe I have seen it.

24 MR. SHAW: If you show it to him, he  
25 might know it.

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2 MR. HINE: Let's mark this as an  
3 exhibit.

4 (Exhibit 81 B, Debtors' Second Rule  
5 30(b)(6) Deposition Notice to Barclays on  
6 Issues Relating to the Transfer of Assets,  
7 marked for identification.)

8 Q. Mr. Blackwell, I am handing you a  
9 copy of Exhibit 81 B, which is a copy of the  
10 Debtors' Second Rule 30(b)(6) Deposition Notice  
11 to Barclays on Issues Relating to the Transfer  
12 of Assets.

13 My first question is have you ever  
14 seen this document before?

15 A. In my discussions with Jonathan I  
16 think I may have seen some portion --

17 MR. SHAW: We are not going to get  
18 into the substance of those discussions.

19 Q. I don't want to ask you about a  
20 privileged communication you might have had,  
21 but can you please turn to Schedule A of that  
22 document.

23 As I understand from Barclays, you  
24 have been designated as a witness as to the  
25 first two topics listed on that schedule, so

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2 could you just take a minute and just take a  
3 look at those topics.

4 (Document review.)

5 A. Understood.

6 Q. Okay. You will see those topics  
7 relate to Schedules A and B that we have talked  
8 about previously in the deposition, so I just  
9 want to spend a little time talking about those  
10 two schedules.

11 Let's look at topic number 1. Were  
12 you involved in the selection of the securities  
13 that made their way into Schedule A?

14 MR. SHAW: Objection to form.

15 Q. Let me rephrase it.

16 Were you involved in the selection  
17 of the securities that are listed in Schedule A  
18 to the Clarification Letter?

19 A. I was involved in the transfer of  
20 the Fed assets over to Barclays, so in terms of  
21 selecting the assets, the selection was done as  
22 I -- was done as I described, which was under  
23 the terms of the repo agreement that was in  
24 place between Lehman and Barclays at that time,  
25 so eligible collateral is a component of that

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2 agreement and had been in place for some time.  
3 So selection is done -- was done -- the assets  
4 were put into the Fed repo. We know that there  
5 were operational issues that I described in  
6 terms of the assets changing because of the  
7 settlement that took place at Chase, and then  
8 there is also a subset of securities that  
9 weren't eligible under the legal terms -- under  
10 the commercial terms of the repo agreement  
11 Barclays had in place with Lehman, which was  
12 standard practice, that's why the Fed had  
13 stepped in and provided liquidity to the whole  
14 market with the PDCF, so poorer quality  
15 collateral was funded by the Fed.

16 So it was clear based on the  
17 schedules which securities fell outside of that  
18 in terms of their quality. So yes, my team  
19 worked with finance with the treasury team to  
20 refine that list based on that requirement, and  
21 in addition to that there were obviously some  
22 substitutions that had to take place to make up  
23 value, so my team worked again with finance and  
24 the clearance teams to drive that -- to  
25 finalize that list, but the list is a

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2 reflection of what moved.

3 MR. HINE: Okay. Let me go at it a  
4 different way here. I have, unfortunately,  
5 some hefty exhibits to pass to you.

6 (Exhibit 82 B, e-mail dated  
7 September 20, 2008, Bates stamped BCI-CG  
8 00035134, marked for identification.)

9 Q. Mr. Blackwell, I am handing you a  
10 lengthy exhibit marked as 82 B, which is a  
11 list -- it's a document Bates stamped BCI-CG  
12 00035134 through 35954. I am not going to ask  
13 you about the contents of this entire document,  
14 but I would like to direct your attention, if  
15 you could take a minute and look at the page --  
16 first page after the e-mail cover, the covering  
17 e-mail, which is marked with the Bates number  
18 35138. Do you see that page?

19 A. Yes.

20 Q. Can you tell me whether -- you will  
21 see in this page a little summary of different  
22 classes of collateral and their market value.  
23 Do you see that?

24 A. I do.

25 Q. Could you tell me whether this is

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2 the collateral that made its way into  
3 Schedule A?

4 A. I would assume that it is, based on  
5 the fact I provided the data to Paolo, but it's  
6 Paolo's team that would have put this together,  
7 so would have interpreted the valuations and  
8 the content based on that.

9 Q. Do you know if the value of the  
10 securities listed on Schedule A is what's  
11 listed here under the column Market Value?

12 A. I don't know. It would be dependent  
13 on how -- again, how -- I don't know how Paolo  
14 ultimately put this together.

15 Q. And when you say "Paolo," you are  
16 talking about Mr. Tonucci?

17 A. Yes.

18 Q. So it's his team that would do the  
19 valuation of this schedule?

20 A. It's his team that created the  
21 summary. Jim Hraska and my team, Monty  
22 Forrest, helped create the data and pushed it  
23 up to the treasury team for them to package.

24 Q. Now, did the list of securities that  
25 ultimately were listed on Schedule A change

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2 over time?

3 A. Not that I understand, no.

4 Q. Okay.

5 A. What was at the Fed and what made it  
6 to Barclays was different for a very sensible  
7 set of reasons as I described, so -- and  
8 perfectly legitimate reasons based on the legal  
9 contracts that were in place at the time.

10 Q. I understand that, but then at some  
11 point the securities that made it to Barclays  
12 were listed in Schedule A; correct?

13 A. Right. So then it would be -- there  
14 was a reconciliation carried out to the best of  
15 our ability to what BONY had received, so that  
16 would be part -- that would be what's in  
17 Schedule A.

18 Q. What are you reconciling when you  
19 did that reconciliation?

20 A. Lehman books and records to a BONY  
21 statement. So effectively Barclays to Lehman,  
22 what moved.

23 Q. Barclays to Lehman?

24 A. Yes.

25 Q. Once the September 18th repurchase

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2 agreement was put in place and the securities  
3 or assets that were collateral for the Fed  
4 moved, some of which I understand didn't make  
5 it because of the issues you have talked about  
6 with respect to BONY, but once that set of  
7 securities made it into the Barclays -- to  
8 support the Barclays repo, were there any other  
9 further changes to that set of collateral  
10 between that time and the time that it was  
11 listed on Schedule A?

12 A. Not that I'm aware of. I can't --  
13 Paolo would be better placed to describe that,  
14 if there had been any change.

15 Q. Mr. Tonucci would know specifically  
16 about that?

17 A. Yes.

18 (Exhibit 83 B, e-mail dated  
19 September 21, 2008, Bates stamped BCI  
20 006647 through BCI 006653, marked for  
21 identification.)

22 Q. Mr. Blackwell, I am handing you a  
23 copy of Exhibit 83 B, which is a document Bates  
24 stamped BCI 006647 through 6653. My first  
25 question is if you have ever seen this document

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2 unencumbered.

3 **Q. Did you have a number of**  
4 **conversations with Mr. Lowitt over the weekend**  
5 **about the subject of the unencumbered assets?**

6 A. I would imagine so, yes.

7 **Q. But is it fair to say they kind of**  
8 **blur a little bit into one?**

9 A. It was -- yes. It was -- they did.  
10 It's hard to know exactly when and where these  
11 conversations took place, but clearly we were  
12 using e-mail a lot as well to just ask people  
13 to create it.

14 **Q. Were any of your conversations with**  
15 **Mr. Lowitt face to face?**

16 A. Some of them would be, yes. Ian was  
17 not -- some of them might have been. Fairly  
18 infrequently.

19 **Q. Did Mr. Lowitt prefer to communicate**  
20 **by e-mail?**

21 A. I just had a very narrow set of  
22 actions I was focused on, right, so I think it  
23 wasn't a question whether he preferred to  
24 communicate or not. I was doing the task that  
25 had been sent me and he wanted updates. He

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2 would send "any update." I think there are  
3 lots of e-mails like that, and there were lots  
4 of e-mails from me to the various teams that  
5 were working on these things saying "any  
6 updates."

7 **Q. Understood. Do you remember when**  
8 **your first conversation with Mr. Lowitt was**  
9 **about this task that he had sent you?**

10 A. No, and it's possible it was Paolo  
11 that initiated the work even. Paolo Tonucci  
12 may have even initiated the work.

13 **Q. So you may have gotten your marching**  
14 **orders indirectly from Mr. Lowitt?**

15 A. That's quite possible.

16 **Q. You said that your task changed over**  
17 **time and that your first task was to determine**  
18 **whether there was, in fact, any unencumbered**  
19 **assets; is that correct?**

20 A. Correct.

21 **Q. Did you have any understanding of**  
22 **why it was you had been sent this task?**

23 MR. SHAW: Objection. Asked and  
24 answered.

25 A. As I stated earlier, I had a goal

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2 that was sent me. It wasn't a period of time  
3 when we were asking lots of questions about why  
4 we were doing it.

5 **Q. Did you come to learn at any time**  
6 **that the purpose of you and your team**  
7 **identifying unencumbered assets was that they**  
8 **be transferred to Barclays?**

9 MR. SHAW: Objection. Asked and  
10 answered.

11 A. There was a -- my understanding was  
12 at some point later on over the course of the  
13 weekend, I actually think it may even have been  
14 the Monday that we were talking about  
15 transferring these assets, talking with I think  
16 the trustee of LBI even at that point.

17 **Q. That was a conversation you had with**  
18 **the trustee of LBI?**

19 A. I didn't, no, but people within my  
20 organization or people within the former Lehman  
21 organization were having those conversations.

22 **Q. Okay. What do you remember about**  
23 **that conversation?**

24 A. I don't -- I didn't have it, so I  
25 don't recall it.

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2 **Q. You just remember that there was a**  
3 **conversation with the trustee?**

4 A. Yes.

5 MR. SHAW: Objection.

6 **Q. About the subject of transferring**  
7 **assets?**

8 A. I recall that there were -- there  
9 was a dialogue with the trustee.

10 **Q. When you say "the trustee," do you**  
11 **mean the trustee directly or the trustee's**  
12 **office and his staff?**

13 A. I think it's probably something like  
14 Anson Frelinghuysen.

15 **Q. We will put that under staff.**

16 The second part of your marching  
17 orders appears to be to ascertain the existence  
18 or otherwise of any excess in Lehman's 15C3  
19 account; is that correct?

20 A. It was to recalculate the 15C3. The  
21 moneys and securities that were locked up in  
22 association with that were managed by the  
23 treasury function, I contributed data into the  
24 calculation which finance ran and we ran that  
25 calculation.

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2 **Q. And as I understand it, it is**  
3 **Mr. Tonucci's team I think you said owns that**  
4 **calculation?**

5 A. No, it's not. It's Tony Stucchio  
6 who reported to Martin Kelly.

7 **Q. And Mr. Kelly's position at the time**  
8 **was?**

9 A. Financial controller.

10 **Q. And that's a separate reporting**  
11 **stream from yourself and separate --**

12 A. Reported to Ian.

13 **Q. And separate from Mr. Tonucci?**

14 A. Paolo reported to Ian.

15 **Q. Did anybody tell you at any point,**  
16 **Mr. Blackwell, that a certain amount of the**  
17 **excess, if any, in the 15C3 fund was to be**  
18 **transferred to Barclays?**

19 MR. SHAW: Objection to form. Asked  
20 and answered.

21 A. There was a discussion about a  
22 mechanism potentially, and I think I had that  
23 conversation with Gerard LaRocco, to transfer  
24 cash if the SEC, Mike Macchiaroli, signed off  
25 that there was, indeed, an excess at a point in

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2 time. Now, that changed. That was a mechanism  
3 we looked at and discarded. So that's the only  
4 conversation that I had around moving cash.

5 **Q. When did you have that conversation**  
6 **with Mr. LaRocco?**

7 A. I don't recall, again, exactly the  
8 exact time. It was probably on -- late on  
9 Saturday, maybe Sunday, but certainly over that  
10 weekend.

11 **Q. Mr. LaRocco was employed by Barclays**  
12 **at that time; correct?**

13 A. Correct, but that was more about how  
14 do you technically move money over a weekend.

15 **Q. What was the mechanism you discussed**  
16 **with Mr. LaRocco?**

17 A. This is an operational process. You  
18 can't move money on a weekend, so discussing  
19 opening up a bank account at -- I think it was  
20 at Wells Fargo. We didn't pursue that any  
21 further.

22 **Q. It sounded like you also discussed**  
23 **with Mr. LaRocco the need for the SEC to sign**  
24 **off on any transfer of 15C3 funds; is that**  
25 **accurate?**

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2 A. Well, the SEC would have to give --  
3 it is a bankrupt entity -- or the SEC would  
4 need to approve any cash movement out of the C3  
5 lock-up.

6 **Q. What's the basis of your knowledge**  
7 **about that subject?**

8 A. Just -- what do you mean by the  
9 "basis"?

10 **Q. How is it you are able to testify**  
11 **about that fact?**

12 A. What fact?

13 **Q. That the SEC would have to approve**  
14 **any transfer from a bankrupt entity.**

15 A. Because of the experience that I  
16 have had.

17 **Q. That's all I was asking.**  
18 **Did you have any conversations with**  
19 **the SEC that weekend about the subject of the**  
20 **15C3 in particular?**

21 A. Not over that weekend, no. I think  
22 I had conversations with -- I had many  
23 conversations with the SEC post, but not over  
24 that weekend.

25 **Q. The conversations that you have had**

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2 **with the SEC subsequent to that weekend, are**  
3 **they related to the transfer of funds from**  
4 **Lehman's 15C3 account to Barclays?**

5 MR. SHAW: Objection. Form.

6 A. I wouldn't characterize them that  
7 way. The -- no, I wouldn't characterize them  
8 that way.

9 **Q. How would you characterize them?**

10 A. The conversations I had with the SEC  
11 have been around asset transfers, not  
12 necessarily related to moneys due from the  
13 15C3, although I think I have had one  
14 conversation post the LBI bankruptcy with Mike  
15 Macchiaroli and some other members of his  
16 office where we discussed this and provided --  
17 I think we may have -- we had a discussion  
18 around the 15C3. That was probably the only  
19 direct conversation we have had specifically  
20 around the 15C3. Then in relation to other  
21 asset transfers, the PIM asset transfer, we  
22 have had a plethora of conversations of which  
23 the 15C3 is a source of customer protection  
24 and, therefore, moneys that you would expect  
25 would be released as it relates to the PIM

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2 transfer, so it's slightly tangential.

3 **Q. When did you have this conversation**  
4 **with Mr. Macchiaroli?**

5 A. I don't know the exact date. It was  
6 probably on the Tuesday -- sometime in the  
7 first week.

8 **Q. And when you say "the first week,"**  
9 **just so we have a clear record --**

10 A. My first week at Barclays.

11 **Q. Who else was present for that**  
12 **conversation with Mr. Macchiaroli?**

13 A. Kendall McLaughlin and Alex Crepeau,  
14 I think. I may not be correct.

15 **Q. Who is Kendall McLaughlin?**

16 A. He was responsible for regulatory  
17 operations at Lehman Brothers.

18 **Q. Does he work for Barclays now?**

19 A. He does not at present. He did  
20 transfer. He subsequently left.

21 **Q. Do you know where he is employed**  
22 **now?**

23 A. Citibank.

24 **Q. And Mr. Crepeau you mentioned**  
25 **earlier. Was he --**

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2 A. Kendall's boss.

3 **Q. Did he transfer to Barclays?**

4 A. He did.

5 **Q. And is he still employed by**  
6 **Barclays?**

7 A. He is.

8 **Q. Do you know what his position is?**

9 A. He is responsible for regulatory  
10 operations. He replaced Kendall. He had  
11 previously post bankruptcy been responsible for  
12 the LBI TSA, the services provided by Barclays  
13 to LBI for operations only.

14 **Q. Do you recall why it is you met with**  
15 **Mr. Macchiaroli?**

16 A. Yes. We discussed the potential  
17 transfer of -- we wanted to transfer the  
18 initial funding of the PIM accounts so -- this  
19 is actually -- this meeting is later. This is  
20 a week later, actually. Sorry. My  
21 recollection is wrong. This is later on, this  
22 meeting.

23 **Q. So if we are talking about the**  
24 **closing of the deal on Monday, the 22nd, of**  
25 **September, you think it's sometime the week**

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2 **of --**

3 A. I think it's later.

4 **Q. The week of Monday 29th?**

5 A. Or even possibly later.

6 **Q. Possibly afterwards?**

7 A. Yes. So we were talking about the  
8 transfer of the loan, the cash in the 15C3 that  
9 was related to the margin loans, and that was,  
10 I think, the first element of the conversation,  
11 and I think the second component of the  
12 conversation was as it related to the  
13 \$769 million worth of securities, Ginnie Maes  
14 held at Chase that potentially were going to be  
15 delivered as part of the -- that was one way to  
16 satisfy the component of the APA, it would  
17 either be securities or some alternative value.

18 **Q. Can you explain to me a little more**  
19 **about your conversation that related to the**  
20 **first alternative, the first part. You said it**  
21 **was cash in the 15C3 account or fund that**  
22 **related to the margin. What do you mean by**  
23 **that?**

24 A. That's related to PIM. PIM  
25 customers take, borrow money against their

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2 positions. They can borrow up to 440 percent  
3 of value.

4 **Q. And you said the second subject, I**  
5 **think probably the subject that I am more**  
6 **interested in, is the \$769 million of Ginnie**  
7 **Mae securities that you said were potentially**  
8 **to be transferred pursuant to the agreement**  
9 **with Barclays; correct?**

10 A. 769 value, so that was either going  
11 to be satisfied through Ginnie Maes or other  
12 alternative value, if there is an excess in the  
13 C3, the 769 value.

14 **Q. It sounds like you have an**  
15 **understanding now of the deal between Barclays**  
16 **and Lehman, is that correct, at least in this**  
17 **respect?**

18 A. Yes.

19 **Q. Can you tell me without waiving any**  
20 **privilege, of course, and any of my questions**  
21 **are not designed to discover information that**  
22 **you discussed with your attorneys, but can you**  
23 **tell me how it is you came to have that**  
24 **understanding of the APA. I ask because your**  
25 **answers to Mr. Hine's questions suggested you**

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**weren't really involved and have no knowledge of the deal and now you are telling me you have some knowledge of the deal.**

A. This was after the event, after the deal had closed, I believe, and that was where these conversations began, in terms of actioning the content of the deal.

**Q. Right. Okay.**

A. It doesn't mean I had an understanding of the whole deal.

**Q. I understand. I don't think you quite answered my question, though, which is how is it that you came to have an understanding that this was a term of the deal?**

MR. SHAW: If you can answer the question without revealing discussions with counsel.

A. That is probably the most likely source.

**Q. Okay. Let's try it this way. What did you and Mr. Macchiaroli discuss in this meeting that you testified about that took place sometime in the week of September 29th or perhaps later?**

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A. Asking the SEC to review the calculation and release and authorize -- provide their sign-off that the C3 had an excess or otherwise, but have an opinion on the C3 and authorize a sign-off to the trustee of LBI to release the cash related to the margin balances, as I mentioned before, another element of the PIM transfer, and securities from -- securities from JPMorgan Chase.

**Q. Was this a meeting that you had requested, Mr. Blackwell?**

A. I don't recall whether I requested it. It's quite possible I did. The SEC set up an office at 745, so were available.

**Q. Where did the meeting take place, at the SEC's office at 745?**

A. Correct.

**Q. And this was Mr. Macchiaroli's office?**

A. Yes.

**Q. Do you have any notes of the conversation you had there?**

A. I don't believe I do. I could go back to my -- I could go back and try and

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review my papers.

**Q. Where would they be if you had them?**

A. Where would they be? They are most likely going to be in my e-mail and they are also potentially in my boxes of files which I have already reviewed and looked through, so I can do that based on these questions.

**Q. Your counsel and I can talk off the record about our document requests.**

**What was Mr. Macchiaroli's response to your request that the SEC review and sign off the 15C3 calculation?**

A. I don't think he was comfortable doing it, doing that at that point. He wanted to get a better understanding of the books and records at that point. So I think we continued to work with members of the SEC and to try and provide them with a better understanding and the finance team probably led that effort in terms of the overall 15C3.

**Q. At the time you asked Mr. Macchiaroli to sign off on this calculation -- withdrawn. I am going to set that up a little better.**

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**You testified in response to Mr. Hine's questions that you were uncomfortable about the accuracy of the C3 calculation over the weekend of September 20th and 21st; correct?**

A. To be precise, what I said, I was uncomfortable about some of the inputs into the calculation, not the calculation itself.

**Q. I didn't mean to mischaracterize your testimony. I didn't mean to suggest that somehow the formula wasn't properly applied, but it seemed to me that as of Sunday night, the 21st, you were not comfortable that the calculation, because of the reasons you have testified to, you are not comfortable that the calculation or the result of the calculation was a hundred percent accurate; is that correct?**

A. That's correct.

**Q. And what happened between Sunday the 21st of September and this meeting with the SEC a week or so hence that allowed you to become comfortable that the calculation was correct?**

A. I wasn't talking about the accuracy

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2 I was discussing with Mike the fact that there  
3 are multiple components for 15C3 calculation,  
4 multiple components, of which I am not expert  
5 at the multiple components. Over the course of  
6 the weekend leading -- the 21st, 20th, 21st,  
7 the work that was done was to determine the  
8 operational components that go into a 15C3  
9 calculation which is some of the components  
10 that we would -- that operations would provide,  
11 and there are many other components that make  
12 that up. That calculation then determines how  
13 much money is locked up. I don't know at that  
14 point in time when that conversation happened  
15 how much money was locked up. Mike and the  
16 trustee of LBI knew how much money was locked  
17 up and what the value of that calculation was.  
18 But I would need to look at papers from there  
19 to determine whether there was an excess. The  
20 request was on the basis that if Mike felt  
21 there was an excess, when could we discuss  
22 having the \$769 million worth of securities.  
23 If there isn't an excess, then I'm not  
24 expecting him to release the securities. But  
25 then alternative value would need to be found  
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2 away from the C3.  
3 **Q. We will come back to the alternative**  
4 **value in a little bit.**  
5 **Have you had any subsequent**  
6 **conversations with the SEC about the subject of**  
7 **C3?**  
8 A. Yes. Again, as it pertained to the  
9 margin debits and the PIM asset transfer,  
10 multiple. Too many to list.  
11 **Q. Have you had any conversations with**  
12 **the SEC about the \$769 million?**  
13 A. I don't think I have had any  
14 subsequent conversations.  
15 **Q. Do you know if anybody else at**  
16 **Barclays has had conversations with the SEC**  
17 **about the release of 769 from the 15C3 account?**  
18 A. I don't know is the -- I don't know.  
19 **Q. Were you ever asked over the**  
20 **weekend, sir, the weekend of September 20th and**  
21 **21st, to do any work as it relates to Lehman's**  
22 **margin or deposits at the OCC or any other**  
23 **exchange?**  
24 A. I don't recall doing any work on  
25 that.  
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2 **Q. Do you recall ever hearing that**  
3 **Lehman's margin or deposits at the OCC or any**  
4 **other exchange were ever part of the deal**  
5 **between Lehman and Barclays?**  
6 A. Over the deal weekend, no.  
7 **Q. That answer suggests to me that**  
8 **subsequently to the deal weekend you have heard**  
9 **that.**  
10 A. I understand that to be the deal.  
11 **Q. And, again, without wishing to**  
12 **invade any privilege that you may have, can you**  
13 **tell me how it is you came to learn that piece**  
14 **of information?**  
15 A. I learned that as part of some  
16 conversations that I think took place --  
17 meetings that took place between the trustee of  
18 LBI, a member of my staff, and Barclays'  
19 counsel, so I...  
20 **Q. That's fine. It's probably not**  
21 **privileged, but I don't need to go into it.**  
22 **You said in response to one of**  
23 **Mr. Hine's questions that one of your**  
24 **responsibilities over the weekend was to**  
25 **monitor settlement activity between various**  
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2 **clearing organizations.**  
3 A. Not over the weekend, because there  
4 is no settlement can take place over the  
5 weekend.  
6 **Q. I'm sorry. I misspoke.**  
7 **Was monitoring settlement activity**  
8 **in various clearing organizations part of your**  
9 **responsibility in the week preceding the LBI**  
10 **bankruptcy on the 19th of September?**  
11 A. Correct.  
12 **Q. Can you tell me a little more about**  
13 **your role in monitoring the settlement**  
14 **activity, please.**  
15 A. My settlement teams were obviously  
16 working very closely with these exchanges to  
17 try and clear the business and working with the  
18 treasury team to fund -- to make sure the boxes  
19 were funded as much as they possibly could, and  
20 over the course of that week funding obviously  
21 started to disappear, so settlement started to  
22 wind down. The most notable event apart from  
23 Chase not providing clearance on the Friday  
24 before bankruptcy was DTC raising the debit cap  
25 to zero, which basically prevented us from  
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2 being able to settle transactions.

3 **Q. What does that mean, raising the**  
4 **debit cap to zero?**

5 A. It means that the account is  
6 effectively not funded, so the process of  
7 settlement can't take place.

8 **Q. I have heard that over the week**  
9 **prior to LBI's bankruptcy that DTC was**  
10 **threatening not to clear trades.**

11 **Is that the same thing that you have**  
12 **just told me in slightly different language?**

13 A. Yes.

14 **Q. Do you have an understanding of why**  
15 **DTC was threatening not to clear trades?**

16 A. Because the account -- because of  
17 funding, funding the account, cash being made  
18 available to fund the account. The treasury  
19 organization would fund all the clearing  
20 systems. If they had insufficient cash to fund  
21 or insufficient cash to fund a clearing  
22 mechanism, then the mechanism doesn't work.

23 **Q. Did you have any conversations with**  
24 **anybody at DTC about the funding issues you**  
25 **just described?**

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2 A. I was informed by Neal Ullman, who  
3 had a direct call with DTC, I had a  
4 conversation, I think it was an e-mail  
5 conversation and then ultimately a conversation  
6 directly with Ian when we became aware of the  
7 situation. I asked Paolo as well if he could  
8 fund the account. So that was -- and asked him  
9 to -- I think there is an e-mail me asking for  
10 \$1.2 billion to be put into the clearance box.

11 **Q. What was Mr. Tonucci's response to**  
12 **your request?**

13 A. I don't remember one.

14 **Q. You took that as a no?**

15 A. I, yeah, moved on.

16 **Q. At any point did you have an**  
17 **understanding, Mr. Blackwell, of the terms of**  
18 **the deal between Lehman and Barclays as to**  
19 **Lehman's DTC box?**

20 A. I think I have discussed this in  
21 some of my earlier answers. I was under the  
22 working assumption that there would be a  
23 conversion of, I think, the 074 box, the DTC  
24 box. That was not accurate. There was  
25 definitely dialogue between the regulators,

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2 which I wasn't in, but I'm aware of, between  
3 the regulators, DTC and Barclays and Lehman as  
4 to Barclays taking responsibility. I think  
5 Barclays was very clear that we not take  
6 responsibility for the liabilities of the  
7 boxes.

8 **Q. You testified earlier that you had**  
9 **made a suggestion that Barclays go and look at**  
10 **Lehman's DTC books. Do you remember that?**

11 A. I do.

12 **Q. For what purpose were you making**  
13 **that suggestion?**

14 MR. SHAW: Asked and answered.

15 A. So that it was possible to  
16 understand any settlement risk.

17 **Q. Was that suggestion made at a time**  
18 **when Barclays was considering stepping into**  
19 **Lehman's shoes at DTC?**

20 MR. SHAW: Objection. Foundation.

21 A. I don't know what the -- I don't  
22 know.

23 **Q. Well, let me ask it this way: The**  
24 **conversion plan about which you have testified,**  
25 **you said that as of, I believe, Friday**

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2 **afternoon, maybe around 5:00, you said the**  
3 **conversion plan was no longer going to be**  
4 **affected; is that correct?**

5 A. Correct.

6 **Q. Did you understand at any point**  
7 **after 5:00 on Friday Barclays was still**  
8 **assessing the risk in Lehman's DTC box?**

9 A. Not at that point. That issue  
10 didn't come up until Sunday.

11 **Q. Do you have any understanding as to**  
12 **why the issue arose on Sunday?**

13 A. I believe it's because the  
14 regulators and other entities that were  
15 involved in signing off on the deal were  
16 insisting that the box should be -- Barclays  
17 should take responsibility for the box, which  
18 they did not want to do.

19 **Q. Where did you get that**  
20 **understanding, that the regulators wanted**  
21 **Barclays to take over the box?**

22 A. I would have heard it either from  
23 Ian or from -- maybe even from Alex Crepeau.

24 **Q. Does that answer exhaust your**  
25 **recollection of the regulators' interactions**

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A. Quite possibly, but again, the focus of this e-mail on this e-mail trail and the focus of what I am doing as the operations manager is trying to identify based on the set of criteria unencumbered securities. I don't know what was discussed in court. I have no idea. And it was, frankly, of little interest to me at that point.

**Q. Miss Rudofker writes: "Alastair" -- and she spells your name wrong -- "and Neal are working on getting it ring-fenced/moved if needed."**

**Was that your understanding of what your marching orders were that weekend, to get the 15C3 assets and the unencumbered box ring-fenced and moved, if needed?**

A. I couldn't technically do that. I could identify assets. I can't move anything over the weekend. I couldn't move cash at the weekend and I couldn't move securities related to it, so practically that's not possible, so my marching orders, as I said, was to identify the assets and provide that information, what are the assets that are currently unencumbered,

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and recalculate the C3.

**Q. Did anyone ever tell you that cash had been removed from the deal between Lehman and Barclays?**

A. That was my understanding of why 769 cash couldn't move, it had to be securities, but I think that was a post -- that was a post-weekend event. That's my recollection.

**Q. Your recollection -- and the event you are talking about is you learning that the reason the transfer is 769, not some number in cash, is because, as you understood it, the terms of the deal was that no cash could go to Barclays?**

A. That was after the weekend, as I thought 769 was a strange number.

**Q. Okay. I think you have answered my question as to timing, but not actually my question.**

**Is it correct that your understanding was that the reason the deal between Barclays and Lehman was the transfer of \$769 million in Ginnie Mae securities rather than that number or some other number in cash**

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**was because cash had been excluded from the deal with Barclays?**

A. I don't think -- I don't think I would have known that. I think I may have learned that subsequently. Around the time my understanding would have been securities needed to move or alternative value.

**Q. From whom did you gain that understanding, sir?**

A. It's going to have been from a similar set of people you see in my e-mails. It's going to be Ian, Martin or Paolo who would have informed me of that.

**Q. So one of the three, to the best of your recollection, you can't remember which, would have told you that the reason the deal changed from I think it was a billion dollars -- does that sound right to you?**

MR. SHAW: Objection. Foundation.

**Q. I think there is probably a number of proper objections to that question.**

**Did you ever have an understanding that some other value different to \$769 million was to be transferred from Lehman's C3 account**

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**to Barclays?**

A. Over the course of the weekend I had spent time, that conversation I had with Gerard around the billion dollars of cash at Wells Fargo, so I had a conversation about the mechanism to potentially move that. That's where my involvement was.

**Q. So based on your conversation with Mr. LaRocco, you had understood that one component of the deal between Barclays and Lehman was to move a billion dollars of cash which was held in that Wells Fargo account which was that 15C3 account?**

A. Correct, dependent, though, on determining there was an excess, and there would be alternative value.

**Q. And when the deal is finally inked in the Clarification Letter, that number has changed, hasn't it? It's no longer \$1 billion; correct?**

A. That is my understanding, yes.

**Q. That number has changed from \$1 billion to \$769 million; correct?**

A. Correct.

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**Q. And just so we have got a clear record, I think we are there, but one more question, your understanding of the reason that the deal changed from \$1 billion in cash from Wells Fargo, assuming there is an excess in the C3 account, the reason it changed from that \$1 billion to 769 of Ginnie Mae securities was a belief that no cash was to go to Barclays under this deal?**

MR. SHAW: Objection to form.

A. I don't have -- over the course of the weekend when the Clarification Letter was being produced, I have no understanding of that at all.

**Q. I understand that, sir. That wasn't my question.**

A. Post the event that is a possibility. It is not something I spent a huge amount of my time discussing.

**Q. But you believe the basis of your knowledge, such as it is, comes from conversations with Mr. Lowitt, Mr. Tonucci and Mr. Kelly?**

A. Most likely.

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(Exhibit 93 B, Management of the Unencumbered Asset Gap, marked for identification.)

(Recess was taken from 3:33 to 3:38.)

BY MR. OXFORD:

**Q. Mr. Blackwell, you have in front of you what I have marked as Exhibit 93 B, which is a document -- a one-page document entitled -- two-page document entitled Management of the Unencumbered Asset Gap.**

**Do you recall seeing this document before?**

A. When I was reviewing my e-mail, I think I saw something like this, if not this one.

**Q. And when you say reviewing your e-mail, do you mean in preparation for this deposition?**

A. Absolutely.

**Q. Did that review refresh your recollection about the events that took place at the time this document was created?**

A. I think this is the -- to the extent

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that it is consistent with the attempt to look for 1.95 billion of collateral. At that point that was a target. I don't know why that target was set, but that was the target. That target subsequently became irrelevant or raised.

**Q. When did it become irrelevant or raised?**

A. It was -- the target ceased to be -- over the course of the weekend it ceased to be about finding a specific number. It was what is available unencumbered collateral.

**Q. And was that change in emphasis something that Mr. Lowitt communicated to you?**

A. I believe so, yes.

**Q. And again, just so we are clear, the idea then was to find as much unencumbered collateral as possible so that it could be transferred to Barclays?**

A. No, that wasn't my understanding. It was to identify unencumbered collateral and determine what value -- determine what was a list of unencumbered securities so that a value could be applied to it. I don't know that the

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intent was to transfer all of it to Barclays. I think the terms of the APA state that the contents of the clearance boxes, i.e., the unencumbered securities in the clearance boxes would be transferred, so I think this is an earlier iteration of that.

**Q. When you say the APA, Mr. Blackwell, the APA to me means the Asset Purchase Agreement that was signed on 16th of September. Is that a document you are referring to?**

A. I'm not sure which date. Whatever legal agreement was in place. I've seen it subsequently, but my understanding is it was -- that was my understanding.

**Q. And is it your understanding that whatever legal agreement this may be, the APA or something else, transfers in terms of unencumbered collateral, it transfers what to Barclays?**

MR. SHAW: Asked and answered.

A. The contents of the -- the unencumbered assets in the clearing box.

**Q. Clearance box was broader to your mind than DTC; correct?**

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A. Yes, it would be.

**Q. Was it -- I think you testified that it included Euroclear?**

A. Correct.

**Q. It also included Canadian exchanges?**

A. Not exchanges.

**Q. Sorry. Then I apologize for my layman's language. It included certain clearance corporations in Canada?**

A. Correct.

**Q. What else were you -- withdrawn.**

**Where else were you looking for unencumbered collateral, if anywhere else?**

A. We were looking in the clearance depos of LBI, and I don't know all the numbers off the top of my head, but there are a list of depos that would fall under LBI and we would -- the teams would have looked in those depos and discounted some of them as not being depos, so the focus is really on, I think, three or four core pools of unencumbered securities.

**Q. The document that I have marked as 93 B says: "The objective is to deliver to BCI \$195 billion as unencumbered collateral by COB**

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**Friday, September 19th." Do you see that?**

A. I do.

**Q. I read COB to be short for close of business. Do you read that also?**

A. I do.

**Q. Do you know why this document has as its objective the delivery of unencumbered collateral by the close of business on Friday, September 19th?**

A. I actually don't, and I think somebody like Paolo would be better answering this question.

**Q. Did you ever have an understanding that there was any effort to transfer unencumbered collateral to Barclays by close of business on Friday, September 19th?**

A. Possibly. I don't recall that as a major part of the fact pattern that we were working towards at that time, but that's possible.

**Q. Do you recall anything else about an effort to transfer collateral to Barclays on Friday, the 19th?**

A. No.

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**Q. Can you explain for me what your understanding is of a 15C3 account, just to make sure we are not passing each other when we are talking about it?**

MR. SHAW: Objection. Asked and answered, and I think also the problem you are going to run into, again, is the use of 15C3 account.

MR. OXFORD: You are right. He did correct that earlier.

**Q. Do you have an understanding of what the requirements are of SEC rule 15C33?**

A. I'm at an expert on that rule.

**Q. Okay. That's useful. That was my next question.**

**Do you have a general understanding of what the rule requires?**

A. I have a general understanding what it requires.

**Q. Can you tell me what that general understanding is?**

A. The purpose of the calculation is to protect customer assets by calculating a figure and that figure is then -- it then requires you

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to deposit either cash or securities, whichever the security types are eligible, into an account for that customer's protection.

**Q. And do you have an understanding of the various elements of the calculation --**

A. No, I don't.

**Q. -- that goes into the 15C3 calculation? You don't know?**

A. I don't.

**Q. Do you have any understanding of how secured loans are treated under 15C3?**

A. No.

**Q. Do you have any understanding of how overdrafts are treated under 15C3?**

A. I don't.

**Q. Do you have any understanding of how margin that is posted at the options clearing corporation is treated under 15C3?**

A. I don't.

(Exhibit 94 B, e-mail dated

9-22-2008, marked for identification.)

**Q. Okay, Mr. Blackwell, I have put in front of you a document marked Exhibit 94 B, which is a one-page e-mail that at the bottom**

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1 Blackwell - Highly Confidential  
2 pledging margin to -- all of the exchange  
3 margin, so the names mentioned here, Craig  
4 Jones, Dan Fleming. I believe you are speaking  
5 to Dan at some point.  
6 **Q. Mr. Fleming has operational**  
7 **responsibility for or had, rather, operational**  
8 **responsibility for the margin at OCC during the**  
9 **month of September '08?**  
10 A. Correct.  
11 **Q. Did he report to Mr. Jones or did**  
12 **Mr. Jones report to him?**  
13 A. Mr. Jones reported to Dan Fleming.  
14 **Q. Are both of those individuals still**  
15 **at Barclays?**  
16 A. They are.  
17 **Q. Do you know why the other Lehman**  
18 **individuals would be copied on an e-mail about**  
19 **this subject? Did they also have**  
20 **responsibility for this area?**  
21 A. I don't. There seem to be  
22 regulatory people, regulatory finance people on  
23 here, so I don't know what -- reading through  
24 the e-mail trail, I don't know what the  
25 ultimate genesis of this trail of work is.  
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1 **Blackwell - Highly Confidential**  
2 A. List of securities that were  
3 unencumbered in the clearance box of Lehman  
4 Brothers.  
5 **Q. As of which date?**  
6 A. I don't know the date. I'm not  
7 going to say what date it was, but the schedule  
8 being created over that weekend is my  
9 understanding.  
10 **Q. This might be a slightly vague**  
11 **question. It's not intended to be in any way**  
12 **tricky. I am just trying to get a sense of**  
13 **whether you think this is in some way the**  
14 **product of the work that your team did over the**  
15 **weekend to identify unencumbered assets. Is**  
16 **that a fair reading of the situation?**  
17 A. I'm aware of a Schedule B that we  
18 contributed to, so I'm assuming based on the  
19 title of the document, but without a number to  
20 compare it, it's difficult for me to --  
21 **Q. It is in alphabetical order, but I**  
22 **take your point.**  
23 MR. SHAW: I will note that on  
24 page 1, Schedule B6, which I think is what  
25 you are looking at, has a title by it  
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1 Blackwell - Highly Confidential  
2 **Q. Which are the regulatory finance**  
3 **people?**  
4 A. Peter Tennison and Tony Stucchio,  
5 and then there are product controllers in Frank  
6 Pearn and Gerry Reilly.  
7 **Q. Thank you. That's all I have for**  
8 **that document.**  
9 **Can you have in front of you, it's**  
10 **one of the big fat ones that Mr. Hine marked,**  
11 **85 B. Can you open the page to the last**  
12 **document in here which starts at Bates range**  
13 **4607 and it's entitled at the top Exhibit B6**  
14 **Source Schedule B Final, Schedule B. Do you**  
15 **see that?**  
16 A. I do.  
17 **Q. Do you recognize this document or**  
18 **know what it is?**  
19 A. I believe I know what it is.  
20 **Q. Can you tell me what it is, please.**  
21 A. I believe this is the unencumbered  
22 collateral list.  
23 **Q. When you say "the unencumbered**  
24 **collateral list," can you be a little more**  
25 **specific, please?**  
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1 Blackwell - Highly Confidential  
2 saying Monday Transfers Par Amount.  
3 A. Right. So it's only one component  
4 of Schedule B.  
5 MR. OXFORD: Which page?  
6 MR. SHAW: Third page of the  
7 document after the first blue page. You  
8 see there is F/N and exhibit.  
9 MR. OXFORD: Yeah, I don't think  
10 that's got anything to do with that. Okay.  
11 A. So this document equals that 2.6  
12 number?  
13 **Q. Is that your understanding?**  
14 A. Well, that's -- I don't know how  
15 this is laid out, so I think that's a fair  
16 point.  
17 **Q. In compiling your list of**  
18 **unencumbered assets, which may not be exactly**  
19 **what is at Bates range 4607 and following, did**  
20 **you or your team undertake any effort to take**  
21 **out securities that were owned by Lehman's**  
22 **customers?**  
23 MR. SHAW: Objection. Vague as to  
24 time.  
25 **Q. At any point over the weekend when**  
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2 you were combining a list of unencumbered  
3 assets that informs this Schedule B that we are  
4 looking at, did you or your team undertake any  
5 efforts to deduct from that list of CUSIPs any  
6 CUSIPs that were owned by Lehman customers?

7 MR. SHAW: Objection to form.

8 You can answer.

9 A. Of course. Unencumbered assets by  
10 definition are not customer assets, however, we  
11 had data within the -- we had data challenges,  
12 so some of the accuracy of the data was  
13 challenging. We applied a rationale, as I  
14 described before, around memo seg and memo to  
15 just take firm inventory, we excluded customer  
16 inventory and were -- we applied a methodology  
17 absolutely with the intent of protecting  
18 customer assets all the way through the  
19 process.

20 Q. Have you ever done any analysis to  
21 determine whether or not any customer assets  
22 ended up on Schedule B?

23 A. I think there were some analysis,  
24 that's possible. I can't -- there was  
25 definitely analysis on Schedule B and

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2 refinement of it, and it's possible, but I  
3 think if that happened, then there was a  
4 correction that took place.

5 Q. And who did that analysis?

6 A. I would imagine it's going to be the  
7 finance team and Jim Hraska in conjunction  
8 maybe with the regulatory ops team.

9 Q. Were you involved in that analysis?

10 A. Not doing the analysis. I think I  
11 have seen analysis over the months post  
12 bankruptcy.

13 Q. Were you involved in reviewing the  
14 analysis that was done by others?

15 A. It's possible. I can't confirm that  
16 a hundred percent, but it's possible I reviewed  
17 analysis. There was no intent to move customer  
18 assets.

19 Q. When you say there was no intent to  
20 move customer assets, do you include in your  
21 definition of customers Lehman affiliates?

22 A. I include the way these schedules  
23 were created or the way that the unencumbered  
24 assets were created was using 931 inventory  
25 accounts, which are firm positions, firm being

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2 LBI positions.

3 Q. Why do you use the date of 9/31?

4 A. I don't use the date. It's an  
5 account identifier. 931 is an account range.

6 Q. I understand.

7 A. So it's a distinct account range  
8 that we analyze, firm inventory accounts.

9 Q. Is it possible that Lehman's system  
10 showed that multiple parties, including  
11 customers of Lehman and Lehman itself, could  
12 have entitlement to the same security in the  
13 clearance box?

14 A. Yes, but there was a methodology  
15 applied to identify that.

16 Q. What was that methodology?

17 A. Again, using 931 accounts, taking  
18 the difference between the value of the  
19 customer -- taking a total value of the  
20 position in the box, taking only the component  
21 which was a -- taking only the component that  
22 was the trading book component, and if that  
23 trading book component was bigger than the  
24 total position, then there was an adjustment  
25 there as well, so absolutely we are taking the

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2 most conservative component and if there was  
3 any doubt in terms of total position and if the  
4 position in the box was less than the -- was  
5 less than the -- less than or equal to the  
6 customer position, we left that position there.  
7 So we didn't -- there was a methodology for  
8 each of the schedules that absolutely was  
9 designed to protect the customer assets.

10 Q. So I understand this, if, for  
11 example, there were a million shares of IBM and  
12 Lehman's books and records showed that there  
13 was an entitlement to those million shares by a  
14 customer and by Lehman, those under your  
15 methodology would have been excluded from your  
16 list of unencumbered assets?

17 A. Yes. That was the intent.

18 Q. Does the same apply to securities  
19 that Lehman's books and records show an  
20 entitlement to by not only Lehman, by which I  
21 mean LBI, the broker/dealer, but also a Lehman  
22 affiliate?

23 A. Jim would be a better person to  
24 explain exactly how he applied the methodology,  
25 but there was deliberate methodology applied to

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*  
9 VIDEOTAPED DEPOSITION OF ALVIN H. BROWN  
10 New York, New York  
11 Friday, January 8, 2010  
12  
13  
14  
15  
16  
17  
18  
19

20 Reported by:  
FRANCIS X. FREDERICK, CSR, RPR, RMR  
21 JOB NO. 27031  
22  
23  
24  
25

A. BROWN - HIGHLY CONFIDENTIAL  
Creditors Committee.

MS. LEE: Shinzong Lee from  
Simpson Thacher.

MR. ROTHMAN: Seth Rothman from  
Hughes Hubbard on behalf of the SIPA  
Trustee.

MR. THOMAS: And let me just note  
that this is part two of a 30(b)(6)  
deposition of Simpson Thacher as opposed  
to an individual deposition of the  
witnesses.

\*\*\*

ALVIN BROWN, called as a witness,  
having been duly sworn by a Notary  
Public, was examined and testified as  
follows:

EXAMINATION BY

MR. THOMAS:

**Q. Mr. Brown, good afternoon.**

A. Good afternoon.

**Q. Would you please state your full  
name?**

A. Alvin Howard Brown.

**Q. And have you been deposed before?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. I have.

**Q. So you understand how this process  
works. If at any point you're not sure what  
question I'm asking, please ask me to  
rephrase. I'll be happy to try.**

A. Yes.

**Q. Do you understand you've been  
designated by Simpson to be the 30(b)(6)  
witness on a couple of topics here today?**

A. Yes.

**Q. And those topics include generally  
the compensation and cure liabilities assumed  
by Barclays and the employment offered to  
Lehman executives by Barclays.**

A. I just didn't understand -- after  
"compensation" what was the next word that  
you --

**Q. Cure payments, liabilities.**

A. Okay.

**Q. We'll work through it and see how  
we do.**

A. Fine.

**Q. How long have you been with  
Simpson?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. Since May of 1983. So about 26  
years.

**Q. And what is your area of practice?**

A. I'm the head of the Executive  
Compensation and Employee Benefits Group at  
the firm.

**Q. And when was the first time you  
became involved in the Lehman/Barclays  
transaction?**

A. September of 2008. It was after  
Labor Day. I don't -- I don't remember the  
exact date.

**Q. And had you worked previously for  
or with Lehman Brothers?**

A. During the course of my time at  
Simpson?

**Q. Yes.**

A. Yes.

**Q. Had they been a regular client of  
the firm for many years?**

A. Yes.

**Q. And can you describe what work you  
have done for Simpson over the years? You  
personally?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. For Simpson?

**Q. Or excuse me. For Lehman. What  
work have you done for -- on behalf of Lehman  
while at Simpson?**

MR. AMER: Do you mean in very  
general terms?

MR. THOMAS: Yes.

A. Actually, my involvement was in my  
early years at Simpson generally and I  
addressed some questions related to ERISA or  
compensation. But hadn't worked with them for  
years until this.

**Q. And when this came up, the  
transaction with Barclays, why were you  
brought into the matter?**

A. Because my partner in the group  
had a personal issue conflict that he couldn't  
be available for the weekend that was going to  
be relevant and I was asked to step in.

**Q. Do you recall the week that Lehman  
Brothers Holding filed bankruptcy being  
roughly September 15th? Is that consistent  
with your recollection?**

A. Yeah. That's consistent.

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 Q. And do you recall whether you were  
3 over -- physically went over to Lehman  
4 Brothers' building on that Monday after the  
5 filing?

6 A. Yes.

7 Q. And you spent a good part of the  
8 day there?

9 A. Yes.

10 Q. And what were you doing there?

11 A. Negotiating the benefit provisions  
12 of an acquisition agreement.

13 Q. And can you elaborate a little  
14 more on the benefit provisions, what precisely  
15 you mean?

16 A. There were provisions in the  
17 agreement that related to the treatment or  
18 handling of the employees of the Lehman  
19 entities. And I was addressing those issues  
20 along with two partners from Weil Gotshal.

21 Q. And who were they?

22 A. Andy Gaines and Amy Rubin.

23 Q. And did you continue to work on  
24 those issues through the week or just for a  
25 couple of days, or do you recall?

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 A. My recollection, yes, but  
3 intermittently.

4 Q. So through the time of closing?

5 A. Really, after the agreement was  
6 signed my involvement was pretty attenuated.

7 Q. And by agreement, are you  
8 referring to the original executed APA?

9 A. Correct.

10 Q. Let me go ahead and show you this.  
11 I might refer to it later. It was previously  
12 marked as Exhibit 1. Take a moment and review  
13 and just confirm whether that's the agreement  
14 that you were involved in negotiating and  
15 drafting.

16 A. I mean the title of it is the same  
17 title as the agreement. You know, without --  
18 I'm assuming that if it is, it is the one that  
19 I worked on.

20 Q. If you would --

21 A. It's certainly the same title.

22 Q. Sure. And if you'd flip to  
23 Section 9.

24 A. (Witness complies.)

25 Q. Are those sections or issues some

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 of the sections and issues that you worked on?

3 A. Yes.

4 Q. Let's put that aside for a second.  
5 And let me show you a document -- we'll refer  
6 back to that in a minute. But let me show you  
7 a document marked Exhibit 489 which is the  
8 LBHI board minutes.

9 (Document review.)

10 Q. Let me start by asking if you  
11 recognize the document itself.

12 A. Only because it's identified. But  
13 I'm not sure.

14 Q. Have you had occasion to read this  
15 document before?

16 A. I have read it in connection with  
17 preparing for this deposition.

18 Q. Okay.

19 A. I'm not sure I saw it before that.  
20 But I...

21 Q. Do you recall attending this board  
22 meeting described here?

23 A. Yes.

24 Q. And you're listed as a present on  
25 the first page.

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 Do you see that?

3 A. Yes.

4 Q. If you would turn, please to page  
5 number 3 of this document.

6 A. (Witness complies.)

7 Q. The second paragraph reads, "Mr.  
8 Roberts -- " do you understand that to be a  
9 Weil Gotshal lawyer?

10 A. I don't remember who he was with.

11 Q. Okay.

12 It reads, "Mr. Roberts resumed by  
13 describing that it is a condition to the  
14 transaction that eight specific firm employees  
15 enter into employment agreements with  
16 Barclays. He stated that Mr. McGee was one of  
17 those employees, so interested firm employees  
18 were involved in the transaction negotiations  
19 on behalf of the team."

20 Do you see that?

21 A. Yes.

22 Q. And so Simpson was aware at the  
23 time the deal was being negotiated that  
24 members of Lehman negotiating the deal were at  
25 the same time negotiating employment

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 agreements with Barclays, correct?

3 MR. HINE: Object to the form.

4 A. Well, I'm not sure -- from your  
5 question I'm just not -- you said Simpson was  
6 aware?

7 Q. Yes. Simpson Thacher.

8 A. I was aware.

9 Q. Good enough.

10 A. Okay.

11 Q. And you're the firm designee on  
12 this issue.

13 A. Okay.

14 Q. Do you recall that being raised in  
15 the -- in a board minute, a discussion of the  
16 fact that certain employees, Lehman employees  
17 who were negotiating a transaction were at the  
18 same time negotiating for future employment  
19 and bonus agreements with Barclays?

20 MR. HINE: Object to the form.

21 A. No. No. Not --

22 Q. You don't recall that?

23 A. I don't recall that being a point  
24 of discussion in the form you just asked me.

25 Q. Okay. Do you recall that it was

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 described to the board that interested firm  
3 employees were involved in transaction  
4 negotiations on behalf of LBHI?

5 A. Yes.

6 Q. And at the last paragraph on this  
7 page do you see where it says "Mr. Brown of  
8 Simpson Thacher & Bartlett reported on the  
9 employee benefits aspect of the proposed sale  
10 agreement. He..." being yourself "...reported  
11 that the firm proposed post-closing covenants  
12 to protect employee benefits but that the only  
13 commitment Barclays would make is to keep  
14 severance levels in place for the balance of  
15 the calendar year."

16 Do you see that?

17 A. Yes.

18 Q. The reference to employee benefits  
19 and the keeping of severance levels in place  
20 for the balance of the calendar year, is that  
21 issue described in Section 9 of the original  
22 APA, Exhibit 1?

23 A. Yes.

24 Q. It goes on. Further down in the  
25 paragraph, it says, "Mr. Brown described the

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 draft employment letters for eight specific  
3 former employees which are a condition to the  
4 deal. He described that draft employment  
5 letters provide for at-will employment for a  
6 period of time with salary and guaranteed cash  
7 bonus and a retention award."

8 Is that an accurate summation of  
9 your description to the board?

10 A. Based on my recollection, yes.

11 Q. And did you actually review the  
12 employment agreements of those individuals?

13 A. No.

14 Q. How did you know about the terms  
15 of the agreements?

16 A. I saw a draft of the form of  
17 letter. But not the actual completed letters  
18 for the individuals.

19 Q. And the form of the letter made  
20 clear that salary and guaranteed cash bonus  
21 and retention award were being provided?

22 A. You know, at this point I don't  
23 recall. But...

24 Q. You have no reason to believe this  
25 description's inaccurate.

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 A. I do not.

3 Q. So in any event you and presumably  
4 others at Simpson were aware of the fact that  
5 people -- at least some of the people  
6 negotiating the deal on behalf of LBHI were at  
7 the same time being offered employment with  
8 Barclays including salary, guaranteed cash  
9 bonus and retention awards?

10 MR. HINE: Object to the form.

11 MR. AMER: Objection to the form  
12 of the question. You can answer.

13 A. Yes.

14 Q. If you would turn to page 4,  
15 please.

16 A. (Witness complies.)

17 Q. The last paragraph reads, "The  
18 directors asked questions about the sale and  
19 license-back of the Lehman Brothers name and  
20 the ability to solicit firm employees if the  
21 deal does not go forward, and the fact that  
22 Barclays will have already signed up  
23 approximately 200 of the firm's employees."

24 Do you recall that the -- Barclays  
25 was concerned about being able to retain the

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 firm's employees which they were going to be  
3 buying?  
4 A. Yes.  
5 Q. And did that make sense to you in  
6 this environment that Barclays was concerned  
7 that they were essentially buying the  
8 business, that they be able to retain the  
9 Lehman employees that made up the business?

10 MR. HINE: Object to the form.

11 A. Yes.

12 Q. Let me show you a document that  
13 we'll mark as Exhibit 531.

14 (Deposition Exhibit 531, document  
15 bearing production number STB 09661,  
16 marked for identification as of this  
17 date.)

18 BY MR. THOMAS:

19 Q. And let me know when you've had a  
20 chance to review it.

21 (Document review.)

22 A. Okay.

23 Q. Do you recognize this as an e-mail  
24 from yourself to a couple people at Lehman and  
25 other Simpson attorneys dated September 17th,

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 2008?

3 A. Yes.

4 Q. And in here you write in part in  
5 the second paragraph, "I wanted to be sure  
6 that you knew that I would be happy to speak  
7 to you or any of the Big 8 or other senior  
8 executives as they worked through the  
9 employment letters or other arrangements with  
10 Barclays."

11 Do you see that?

12 A. I do.

13 Q. Do you recall if you ever ended up  
14 doing further work in terms of the substance  
15 of the employment letters?

16 A. I -- yes.

17 Q. And did you?

18 A. No.

19 Q. Turning back to the original APA  
20 and that Section 9. Section 9.1. Is it fair  
21 to say that Section 9.1 addresses two types of  
22 employment -- employee benefits; one involving  
23 severance payments and one involving bonus  
24 payments?

25 A. Could you repeat the question?

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 Q. Sure. Within Section 9.1 which is  
3 Employment Benefits there's both an assumed  
4 liability by the purchaser in terms of  
5 severance and bonus payments, correct?

6 MR. HINE: Object to the form.

7 MR. AMER: You can answer.

8 A. Yes.

9 Q. Do you know if there was ever any  
10 effort to calculate that liability?

11 A. I don't recall.

12 Q. Do you have any recollection of a  
13 \$2 billion number?

14 A. Yes.

15 Q. Is it your recollection that \$2  
16 billion number was someone's estimate of  
17 potential liability under Section 9.1?

18 MR. HINE: Object to the form.

19 A. Yes. But not with respect to the  
20 section that you just were referencing. The  
21 \$2 billion number really related to subsection  
22 C.

23 Q. Do you recall ever seeing it on  
24 a -- where do you recall seeing the \$2 billion  
25 number?

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 A. It was on a schedule.

3 Q. And did the schedule have a  
4 separate line item for severance?

5 A. I don't recall.

6 Q. And do you know who calculated the  
7 \$2 billion figure?

8 A. I do not.

9 Q. Were you involved in that process  
10 in any way?

11 A. In calculating the number?

12 Q. Yes.

13 A. No.

14 Q. Do you have any understanding what  
15 it entailed specifically?

16 A. Yes.

17 Q. And -- let me go ahead and show  
18 you a document we'll mark as 532.

19 (Deposition Exhibit 532, document  
20 bearing production number LBHI 013444  
21 with attached spreadsheet, marked for  
22 identification as of this date.)

23 A. Okay.

24 Q. Have you ever seen this document  
25 before?

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2 A. No.

3 Q. Let me ask you to take a moment to  
4 review the attachment to the e-mail.

5 A. The attachment to --

6 Q. The cover is an e-mail --

7 A. Oh, I see. Okay. Sorry.

8 Q. The cover is an e-mail from Kelly  
9 Martin to Richard Krasnow, an attorney at Weil  
10 Gotshal, dated September 18th, 2008.

11 A. Right.

12 Q. The spreadsheet attachment, do you  
13 recall whether as part of your work with  
14 respect to the Barclays sales transaction, you  
15 ever reviewed sheets like this?

16 A. Yes.

17 Q. And did you?

18 A. Yes. But not this one.

19 Q. How do you -- how are you certain  
20 a year later that it's not this one?

21 A. I've just never seen it before.

22 Q. Did you see a lot of spreadsheets?

23 A. No. Well, in this transaction?  
24 No.

25 Q. Have you seen more than one?

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 A. Not that I recall.

3 Q. When you say spreadsheet, are you  
4 referring to just a one-page schedule?

5 A. Correct.

6 Q. You never saw any of the backup as  
7 to how that schedule was built up?

8 A. (Witness shakes head.)

9 MR. AMER: You have to answer.

10 THE WITNESS: Oh.

11 A. No.

12 Q. If you would look at the last page  
13 of this document under the Liabilities column,  
14 do you see the fourth section there, Payables?

15 A. Yes.

16 Q. And do you see Compensation  
17 Payable?

18 A. Yes.

19 Q. And do you see that there was a  
20 transaction adjustment to that payable?

21 A. Yes.

22 Q. Were you aware at the time that  
23 there was a transaction adjustment to the  
24 estimate for compensation payables?

25 A. Not that I recall.

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2 Q. You don't recall having  
3 discussions with Weil Gotshal lawyers about  
4 that issue?

5 A. No.

6 Q. Do you have an understanding of  
7 why there would be a transaction adjustment?

8 MR. GATTO: Object to the form of  
9 the question.

10 Q. To the compensation payable.

11 MR. AMER: Same objection. Since  
12 he doesn't recall there being an  
13 adjustment.

14 A. No. I mean...

15 Q. Do you have any knowledge as to  
16 whether this line item, Compensation Payable,  
17 includes severance?

18 A. No.

19 Q. Do you know whether Lehman pays a  
20 larger or smaller percentage of its yearly  
21 bonuses as cash than Barclays does?

22 MR. AMER: Object to the form of  
23 the question.

24 A. I don't recall.

25 Q. Do you know whether the \$2 billion

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2 figure you're referring to was adjusted in  
3 order to allow for the fact that Barclays pays  
4 a higher percentage of cash compensation?

5 MR. HINE: Object to the form.

6 A. No.

7 Q. Do you understand whether there  
8 was any adjustment to the figure in order to  
9 cover the entire Lehman fiscal year for the  
10 compensation amounts due?

11 MR. HINE: Object to the form.

12 A. No.

13 Q. Do you have any understanding of  
14 where that \$2 billion figure came from or how  
15 it was calculated?

16 A. Yes.

17 Q. Can you tell me.

18 A. My understanding was that that was  
19 the number for the accrued bonuses for the  
20 Lehman employees for that year. It had been  
21 agreed to and was put on the schedule.

22 Q. And where did that understanding  
23 come from?

24 A. I don't -- it was from one of the  
25 participants or part of the team that was

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 involved in negotiating but I don't recall  
3 specifically who it was.

4 Q. Do you recall which party it was  
5 from?

6 A. No.

7 Q. Is this something that you  
8 actually recall from a year and a half ago or  
9 is it something that you've learned in  
10 preparation for this deposition?

11 MR. HINE: Well, hold on. Before  
12 you answer that --

13 MR. THOMAS: That's a timing  
14 question. That can't be privileged.

15 MR. HINE: I'm cautioning him not  
16 to reveal privileged information he  
17 might have learned after September 30th.  
18 We have a waiver here. So if your  
19 answer entails something that you  
20 learned after September 30th you're not  
21 allowed to waive the privilege.

22 A. I'm not -- could you repeat the  
23 question because I'm not sure --

24 Q. Your understanding about this \$2  
25 billion figure, is this an actual recollection

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 of yours from a year and a half ago or is it  
3 something you've come to understand more  
4 recently in connection with this deposition?

5 MR. HINE: Same warning.

6 A. When you say my understanding of  
7 this, I mean, what I told you was my  
8 understanding and I really hadn't had  
9 discussions that changed that since then.

10 Q. So this is based on your  
11 recollection from a year ago.

12 A. My recollection.

13 Q. Now, what did you do to prepare  
14 for today's deposition?

15 A. I met with my counsel.

16 Q. Anything else?

17 A. Actually, no.

18 Q. If -- so turning back to the --  
19 Section 9.1 of the original APA did you draft  
20 this language in any part of the 9.1?

21 A. Yes.

22 Q. Which portions did you draft?

23 A. That I can't recall.

24 Q. Were you the original drafter?

25 A. No.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 Q. Do you know who was?

3 A. Somebody at Cleary. I dealt with  
4 Arthur Cohen who's a partner at Cleary but I  
5 don't -- the draft came originally to me and  
6 my understanding was it had been drafted by  
7 Cleary and then I marked it up.

8 Q. Do you recall any changes you made  
9 to (b) or (c)? Section (b) or (c) of 9.1.

10 A. I don't recall the specifics.

11 Q. Okay. Is it your under -- let's  
12 say that after Barclays -- the Barclay  
13 transaction was consummated 90 percent of the  
14 employees were severed. Barclays would have  
15 to pay severance for those employees, correct,  
16 pursuant to 9.1(b)?

17 MR. AMER: Objection to the form  
18 of the question.

19 Q. 9(c). Strike that.

20 If Barclays -- under 9.1 Barclays  
21 would have to pay severance payments to  
22 employees severed prior to the end of the  
23 year; is that correct?

24 A. Correct.

25 Q. And if there were a lot of

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2 severances -- strike that.

3 And you know if that would involve  
4 paying those employees all of their accrued  
5 2008 bonus money.

6 A. Yes.

7 Q. So there's potentially a lot of  
8 assumed liability by taking on that severance  
9 obligation; is that correct?

10 MR. HINE: Objection.

11 A. Correct. Yes.

12 Q. Is it your belief that if Barclays  
13 had terminated 90 percent of the employees,  
14 that the remaining 10 percent of the employees  
15 would have to get paid \$2 billion?

16 MR. ROTHMAN: Objection to the  
17 form.

18 MR. HINE: Same objection.

19 MR. AMER: You can answer.

20 A. No. That's not my understanding.  
21 Or my belief.

22 Q. In that event if that -- in that  
23 scenario, would some of the \$2 billion be sent  
24 to pay bonuses to the retained employees and  
25 severance to the severed employees?

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2 MR. HINE: Object to the form.

3 A. Well -- no. I mean, I --

4 MR. AMER: If you don't understand  
5 the question tell him.

6 A. Yeah. Can you repeat the  
7 question?

8 Q. Sure. There's \$2 billion we've  
9 referred to.

10 A. Right.

11 Q. And I think you've said that if  
12 90 percent of the employees are severed you  
13 wouldn't have to pay the whole \$2 billion to  
14 the remaining 10 percent for bonuses. My  
15 question is wouldn't some of the \$2 billion  
16 under your -- under the section here be going  
17 to pay the accrued bonuses of those severed?

18 A. Yes.

19 MR. HINE: Object to the form.

20 A. As well as severance.

21 Q. Okay. So the \$2 billion includes  
22 both bonus and severance?

23 MR. HINE: Object to form.

24 MR. KAY: Objection.

25 A. No.

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2 somebody's being severed. To you that may be  
3 a severance payment. I distinguish the  
4 severance payment that somebody gets purely on  
5 account of being severed from things that get  
6 accelerated by virtue of a termination.

7 So, for instance, if somebody was  
8 entitled to a retirement payment under a  
9 non-qualified retirement arrangement and the  
10 got severed and that accelerated the payment,  
11 I wouldn't call that a severance payment. I  
12 would call that an accelerated retirement  
13 payment that's triggered by severance.

14 So I would say they would get  
15 severance and they would get a bonus. The \$2  
16 billion or their portion of the \$2 billion  
17 would be the bonus and the severance would be  
18 whatever the severance was.

19 Q. Well, however it's characterized,  
20 if there was a 90 percent -- or 90 percent of  
21 the compensation, of the \$2 billion 90 percent  
22 would go to the 90 percent terminated and the  
23 10 percent would go to the 10 percent  
24 retained, correct?

25 A. Correct.

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2 Q. Can you explain?

3 A. Yes. The bonus -- in order to  
4 prevent people from being terminated and  
5 deprived of their bonus, the arrangement was  
6 that if they were terminated they would  
7 receive their accrued bonus and they would be  
8 paid severance under the severance  
9 arrangements so that the \$2 billion -- if  
10 90 percent of the people were terminated and  
11 they represented 90 percent of the bonus pool,  
12 they would be paid the 90 percent of the bonus  
13 pool and to the extent they were covered under  
14 severance arrangements they would also be paid  
15 the severance arrangements that they were  
16 entitled to. If they were severed before  
17 12/31/2008.

18 Q. But those that were severed,  
19 although they would be getting paid in effect  
20 their accrued bonus for 2008, that payment  
21 would actually be in the form of a severance  
22 payment, correct?

23 MR. HINE: Object to the form.

24 A. I mean, you know, to me it's a  
25 bonus payment that's being paid because

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2 Q. Turning back to Exhibit 532 which  
3 is the e-mail attaching the two-page  
4 spreadsheet.

5 A. Okay.

6 Q. What do you understand the term  
7 transaction adjustment to refer to?

8 MR. HINE: Object to the form.

9 A. Generally?

10 Q. Yes.

11 A. It's some kind of either purchase  
12 price or other calculation change.

13 Q. And are you -- do you know how the  
14 estimates for potential exposure on cure  
15 liabilities was calculated?

16 A. No.

17 Q. Do you have any knowledge of what  
18 those amounts were?

19 A. No.

20 Yeah, go ahead.

21 Q. I mean --

22 A. I'm not sure I know what a cure  
23 liability is so --

24 Q. Okay. Or -- well, let's take a  
25 look at Section 2.5 of the APA. Would you

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1  
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

11  
12 DEPOSITION OF SAUL BURIAN

13 New York, New York

14 December 17, 2009

15  
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 26532  
19  
20  
21  
22  
23  
24  
25

Page 6

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BURIAN

(Exhibit 457-B, Notice of Deposition marked for identification, as of this date.)

THE VIDEOGRAPHER: This is the start of the tape labeled number 1 of the videotape deposition of Saul Burian in the matter of In re Lehman Brothers Holding, Inc., et al.

This deposition is being held at 575 Lexington Avenue, New York, New York, on Thursday, December 17, 2009, at approximately 9:34 a.m.

My name is Steve Sanpietro from TSG Reporting, Inc. I am the legal video specialist. The court reporter today is Mary Bowman in association with TSG Reporting.

Will the court reporter please swear in the witness.

(Witness affirmed)

THE VIDEOGRAPHER: Will counsel please state your appearance for the record.

MR. STERN: Jack Stern, from Boies, Schiller & Flexner for Barclays.

MS. OBERKAMPF: Camille Oberkamp from

BURIAN

Boies, Schiller & Flexner for Barclays.

MS. SCHAFFER: Tracy Schaffer and Susan Turk from Jones Day for LBHI.

MR. OXFORD: Neil Oxford from Hughes, Hubbard & Reed for the SIPA trustee.

MR. TECCE: James Tecce, Quinn Emanuel, Urquhart, Oliver & Hedges for the official committee.

MR. WHITMER: Tyler Whitmer, Quinn Emanuel, for the committee.

MS. TAGGART: Erica Taggart with Quinn Emanuel for the committee and the witness.

SAUL BURIAN,

called as a witness by the parties, having been duly affirmed, testified as follows:

EXAMINATION BY

BY MR. STERN:

**Q. Good morning, Mr. Burian. Could you describe for us your education, starting with college?**

A. Sure. Good morning.

I went to Yeshiva College here in New York City. I went to Columbia University School

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Page 9

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of Law, also here in the city.

**Q. Could you describe your professional experience before you joined Houlihan Lokey?**

A. Starting after law school or --

**Q. Yes.**

A. So after I left Columbia, I joined the firm Kramer Levin Naftalis & Frankel. I was there for 13, 14 years, and then joined Houlihan Lokey, which is where I am now.

**Q. What was your position at Kramer Levin when you left Kramer Levin?**

A. I was a partner of the firm.

**Q. In what practice area?**

A. Restructurings and business reorganizations.

**Q. And was that your practice area for your entire time at Kramer Levin?**

A. The first short period of time I split my time between the corporate department and the restructuring department. I wanted to specialize in distressed transactions.

**Q. So for how many years at Kramer Levin did you practice bankruptcy law?**

A. Again, I'm not sure what you mean by

BURIAN

bankruptcy law. I spent most of my time in the early years doing corporate transactions in and around insolvencies. I did public offerings and other stuff as well, but for the most part corporate transactions that related to restructuring matters.

Later on, I started working more broadly on restructuring matters. So you decide when that means I started doing bankruptcy law and when I didn't.

**Q. Fine.**

**When was Houlihan Lokey first engaged to serve as financial advisor to the creditors committee in the Lehman case?**

A. I will consider engagement to be when the committee said you're hired, not when the court order was entered. We interviewed with the committee, I believe it was the Wednesday night after the filing. If you have a calendar, I could be more specific about dates. But it was that Wednesday night.

**Q. For ease of reference, I'll give you a calendar for September 2008.**

A. OK. So I would say Wednesday, the

BURIAN

17th of September.

**Q. And how did Houlihan go about selecting its team for this representation?**

MS. TAGGART: Object to form.

THE WITNESS: Does that mean I continue or I stop?

MS. TAGGART: Yes, go ahead.

A. Well, in a financial restructuring group, we have a number of managing directors who have experience in complicated matters. We were invited to meet with the committee on that Wednesday morning, the 17th, and it was a combination of who had availability for a matter this time consuming and this complex, as well as who had the requisite combination of skills for a deal of this size.

There is no specific formulas. It is probably similar to how you got involved in the Barclays litigation.

**Q. Ultimately who were the key members of the Houlihan team?**

MS. TAGGART: Object to form and to time. When -- when do you mean?

**Q. At the outset.**

BURIAN

**senior members of the team?**

A. Again, senior in terms of age, senior in terms of the firm?

Jeff Werbalowsky, who is the co-CEO of our firm, attended the pitch and was available when and if we needed him.

If you are asking who actually performed services, billed time, recorded time and organized work groups, Eric and I were the two managing directors that did that.

**Q. You supervised the matter?**

MS. TAGGART: Object to form.  
Go ahead.

A. I worked on the matter and supervised it as well. And we split up responsibilities for different things.

**Q. And what role did Mr. Fazio have?**

A. Then or now?

**Q. At the time in the first week after the engagement.**

A. You know, we were drinking from a firehose in all sorts of issues. Mike was supporting me in trying to understand the Barclays transaction, give advice, and also

BURIAN

A. You know, Lehman is a very, very large matter. Eric Siegert and I sort of quarterback the whole transaction, but -- the whole representation of the committee, but with respect to a variety of different areas, there are different people that day-to-day are more responsible than others.

This has required a pretty significant effort.

**Q. During the first week of your engagement, who were the most senior members of your team?**

A. Eric and I. Mike Fazio. Brad Geer. Tanja Alto was very active.

We then had certain people that we were trying to get up to speed on different assets. We had the financial institutions group that was very active the first couple -- you know, first couple of months, mainly on Neuberger Berman and its related assets.

It is hard to answer with -- is that the answer you are looking for?

**Q. That's fine.**

**Were you and Mr. Siegert the most**

BURIAN

trying to get our arms around all the non-Barclays-related issues, you know, at Lehman.

**Q. What was Mr. Geer's role?**

A. There, too, Brad was also helpful in trying to figure out what needed to get done, assign responsibilities, and he, too, focused on aspects of the Barclays transaction.

At that point in time, I don't know if it is possible to really adequately describe how much was going on at once. And therefore, just to create lists of what had to get done was a full-time job.

So Brad and Mike were extremely helpful in that regard.

**Q. At the time, did you feel that you had selected a team that was highly qualified to do the assignment that you had?**

MS. TAGGART: Objection to form.

A. Yeah, I'm not sure -- we were comfortable that the representation of the committee was adequate, and the committee selected us because they had confidence in us, I guess.



BURIAN

**Q. You felt that you had a team that was highly qualified to analyze the financial aspects of the bankruptcy sale?**

MS. TAGGART: Object to form.

A. When we first got involved, we didn't know what the sale was. So it is sort of a chicken and egg problem.

We had a team that has as much or more experience in advising committees in complex transactions of all types. All types, not just financials. And we didn't know exactly what would be faced, but our job is try to dive in, understand it the best we can and give advice.

**Q. And I understand that the situation was very expedited. Did you feel that you had a team that was as capable as any financial advisory team of handling such an expedited situation?**

MS. TAGGART: Object to form. Calls for speculation.

A. Again, you keep on talking about as qualified or as any other team. Theoretically I can get an all-star dream team of people, parachute them in, and I could cherry-pick from

BURIAN

**experience that you just said Houlihan lacked?**

A. No. I mean not to my knowledge. They focused mainly on the TSA aspects of the transaction and the integration and computer IT issues, which was an area that we were not as familiar with.

**Q. Did Houlihan ever advise the committee that it felt that Houlihan lacked certain necessary experience to handle the assignment?**

MS. TAGGART: Hold on. Wait, I want to read that.

Is this before or after the retention, Jack? Are you asking before or after the retention did Houlihan advise the committee?

MR. STERN: At any time.

MS. TAGGART: Then I will object to privilege. You can answer before the retention.

MR. STERN: You're instructing him not to answer?

MS. TAGGART: Yes, I am instructing not to answer after the retention about Houlihan's advice to the committee about the experience that Houlihan had.

BURIAN

every firm around the world and find the right person that could match up with every single need. That's not the way the real world works. That's not the way restructuring firms work.

So no, we were not as qualified as any team I can imagine could have been at the time. And if anything, as you know, Houlihan Lokey does not have a capitals markets practice. We don't do sales and trading. We don't do public offerings.

As many, many of these things we don't do, and therefore, in retrospect, it might have been nice to have some of that expertise.

**Q. What other financial advisors worked for the committee in that time period?**

MS. TAGGART: Objection, foundation.

A. There was another financial advisory firm that was retained the same night, FTI Consulting.

**Q. Did Houlihan work with FTI Consulting in the period from September 17 through the end of September?**

A. Sure.

**Q. Did FTI have the capital markets**

BURIAN

So you should -- can you read, reread the question.

And you should answer up until the point that you were retained.

(Record read)

A. We did not believe we lacked necessary experience, nor did we -- we advised the committee accurately about what our relative strengths and weaknesses were, and they chose us as the best firm to represent them.

**Q. At any time did Houlihan provide legal advice to the committee?**

A. No.

THE WITNESS: Sorry.

MS. TAGGART: That's all right. Objection.

It's OK. I was just going to tell you to answer yes or no to that, so go ahead.

A. No.

**Q. We have premarked as Exhibit 457-B the 30(b)(6) notice for this deposition. Mr. Burian, you understand that you're testifying today both in your individual capacity and as a 30(b)(6) representative of**

BURIAN

**Q. Did reviewing that material refresh your recollection concerning the facts?**

A. Well, there are two aspects of this deposition, right? I was told that I'm the Houlihan representative even beyond things that I have direct personal knowledge of, if I feel comfortable I can say with authority that they occurred or didn't occur.

So to the extent that they related to events that I was not directly part of, they might have.

**Q. They might have refreshed your recollection?**

A. Again, there are two aspects of this. There is things that I know because I was there, I did, I saw, I participated.

**Q. Let me focus on that. Let me focus on that.**

**Did anything that you reviewed in preparation for this deposition refresh your recollection concerning those matters, those matters you were involved in?**

A. Yeah. I had some notes that we produced that helped me remember the -- how the

BURIAN

**through September 22, when Houlihan provided summaries to the committee concerning the transaction, what was the purpose of those summaries?**

MS. TAGGART: Object to form. And vague.

A. We didn't provide written summaries to the committee. I don't know that wasn't your question, but I am trying to move this along. We didn't provide written summaries.

**Q. It is your testimony today that Houlihan never provided a written summary of the status of negotiations or the status of the agreement?**

A. I have no recollection of any written Houlihan summary of the transaction.

**Q. I would like to mark as the next exhibit a document labeled "limited Objection of Official Committee of Unsecured Creditors."**

**(Exhibit 458-B, document labeled "Limited Objection of Official Committee of Unsecured Creditors" marked for identification, as of this date.)**

**Q. This will be labeled 458-B.**

BURIAN

deal was described to us at different times.

**Q. Did you review any privileged communications?**

MS. TAGGART: Object to form and I guess foundation.

But if you know if you reviewed privileged communications, you can answer.

A. You have to define that for me, because it keeps changing. I know there was a hearing about that yesterday, but I don't think -- I don't think so. Things I got were redacted. It was -- I think I only received what you received. So if you received privileged information, then yes, but I don't think you did, so no.

**Q. Did you review any summaries of the sale transaction that Houlihan had provided to the committee?**

A. No. No.

**Q. Did you review any summaries of the sale approval hearing that Houlihan had provided to the committee?**

A. No.

**Q. During the period from September 17**

BURIAN

A. You are not marking the attachments? You are just the objection?

**Q. Correct. We will get to the attachments separately.**

**Mr. Burian, do you recognize the document that we have marked as Exhibit 458-B?**

A. I do.

**Q. And what is it?**

A. It's my committee's limited objection to the SIPC settlement with Barclays.

**Q. And at the time you submitted a declaration that supported this objection; is that right?**

A. I did. I see it is not attached.

**Q. We will mark that separately, but my question is, when you submitted your declaration in support of this objection, did you review the objection itself?**

A. Yeah, I must have.

**Q. And do you recall whether you did or not?**

A. I did. I mean I must have.

**Q. At the time, did you believe that everything stated in the objection was accurate?**

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A. In this objection?

Q. Yes.

A. At the time did I think everything stated in this objection -- the things that concerned me, I checked, I read, and would have corrected if I thought there was a mistake.

If there is things in here that don't relate to me, then I may have left it to Quinn Emanuel to get right.

Q. Let's look at page 8, and specifically footnote 12. Do you see that?

A. Yes.

Q. It states, "At the sale hearing, the Lehman sellers indicated the value of the Fed portfolio securities was 47.4 billion dollars."

As of the time this objection was submitted, was that an accurate statement of what the committee believed the 47.4 billion dollars represented?

MS. TAGGART: Objection to form, and as worded I am going to object on privilege and instruct not to answer.

So don't answer.

MR. STERN: You're instructing him not

BURIAN

to answer?

MS. TAGGART: Yes. He should not answer what the committee believed was the value of the Fed portfolio at that time. And I know there is going to be a deposition, a 30(b)(6) deposition of the committee, so --

MR. STERN: You have instructed him not to answer?

MS. TAGGART: Yes. I think any understanding that he has of what the committee believed at that time would be based on privileged communications, so I am instructing not to answer.

And that's also not something that's in the 30(b)(6) notice. He is testifying for Houlihan and he is the Houlihan 30(b)(6) witness.

MR. STERN: He is also testifying in his individual capacity.

Q. Let me ask a different question. Mr. Burian, looking again at footnote 12 of this objection, at the time that you reviewed this objection, did you have any reason to believe

BURIAN

that this statement was an inaccurate or false statement?

MS. TAGGART: Hold on. The statement being that the Lehman sellers had said that the value of the Fed portfolio was 47.4 billion?

MR. STERN: Please, please. I think you know that you are entitled to object to form or to instruct not to answer. But speaking objections are not allowed.

Let me ask the question again. Let's see if we can adhere to the rules.

Q. Mr. Burian, looking again at footnote 12, it states, "At the sale hearing, the Lehman sellers indicated the value of the Fed portfolio securities was 47.4 billion."

My question to you, based on your personal knowledge, at the time that was said to the court in this submission, was that an accurate statement of what you understood the 47.4 billion dollars to represent?

MS. TAGGART: Object to form.

Q. You can answer.

MS. TAGGART: You can answer if you

BURIAN

understand.

A. What definition are we using for Fed portfolio securities? Are we using the colloquial definition of the securities that were part of the repo, or using your definition that says in retrospect it included 7 billion in cash, it didn't include 7 billion in cash?

You know, that's why I stated to you earlier that you were going to have this problem, because I don't know what Barclays intended it to include and, as you know, the 7 billion in cash may or may not have been moved.

Q. Let's look back at --

A. At the closing, not at the hearing. So --

Q. Let's look back at paragraph 7, which begins on page 4.

A. Paragraph 7 of the --

Q. Of the committee's objection. You can put the 30(b)(6) notice to the side. I'm not referring to that.

A. OK, but in -- I kept it out only because I was concerned about definitions.

BURIAN

Q. So you believed that the judge was apprised that the securities worth 47.4 billion dollars were going to be transferred and that the securities were part of the repo? Is that correct?

A. Yeah, now that I think about it, there may have been vagueness about transferred or kept because of the cancellation of the repo. I don't remember that detail.

But yeah, that basically 47.4 billion of securities, Barclays was going to end the transaction by taking, keeping, being transferred to 47.4 billion of securities.

Q. Those are the securities that were being transferred as part of the repo, correct?

A. I don't remember that -- I don't remember -- we can look at the transcript together if you like, how definitive Lori was about -- Ms. Fife from Weil, how definitive she was about exactly where the securities came from.

Q. That's why I am focusing on this. In December 2008, the committee told Judge Peck that it understood that at a sale hearing, the

BURIAN

Lehman sellers indicated the value of the Fed portfolio securities was 47.4 billion dollars. You have no reason to believe that that statement to Judge Peck in December of 2008 was an inaccurate or false statement, do you?

A. Again, because maybe I am missing a nuance here, I know now and I knew in December that there was a lot of confusion about what was part and not part of the Fed portfolio package. There were allegations that JP Morgan took assets, problems that DTC refused to clear assets.

There were all sorts of disputes going on that for the most part were not explained to us. We were told -- I understand that some cash was substituted.

So if you are asking me did I know in December whether some very narrow definition of exact collateral for a specific repo in one particular place was 47.4, I would have assumed not. It was an amalgam of a bunch of things.

Are you asking me sitting at the hearing whether I thought that Lori was describing the transaction that I had been

BURIAN

described earlier that day, that was we have a repo, we have collateral for the repo and they are going to -- that that's 47.4, yes.

So what this footnote is saying, and it wasn't meant to be parsed the way you are parsing it, what this footnote is saying is, golly gee whiz, the transaction was a simple transaction in which the repo obligations and the assets were being transferred. And the Fed portfolio securities were at that time, we thought, what those securities -- the bucket of securities that were involved.

Is that helpful?

Q. Let me try to ask my question again, because I need an answer to my question, which is a simple question.

Footnote 12 of this objection, which is dated as of December 19, 2008, states, "At the sale hearing, the Lehman sellers indicated the value of the Fed portfolio securities was 47 billion dollars."

My question is, as of the time this objection was submitted, as of the time this statement was made to Judge Peck, you did not

BURIAN

have any reason to believe, did you, that this was an inaccurate statement of what the Lehman sellers had indicated?

MS. TAGGART: Objection --

Q. Yes or no?

MS. TAGGART: Objection to form, asked and answered. He just gave that answer. He can answer one more time, but that's going to be all.

A. I didn't go back and read the whole trial transcript when this was filed, and therefore, I didn't have a view as to whether this was a direct quote or not of Ms. Fife.

Q. Did you have any reason to believe this was an inaccurate statement of what she had said?

MS. TAGGART: Objection, asked and answered. Object to form.

OK, do you want to answer that again?

A. I think it was an accurate description of what we all thought she said.

Q. Let's turn now to another part of the objection, paragraph 9 on page 6. It states, "The hearing" -- are you with me on paragraph 9?



BURIAN

A. I am.

Q. Paragraph 9 states, "The hearing to consider approval of the transaction (the sale hearing) commenced on Friday evening, September 19, 2008. At the sale hearing, the Lehman sellers advised the court of certain changes to the sale transaction's terms since executing the purchase agreement on September 16th, purportedly resulting from dramatic changes in the value of the Fed portfolio securities being transferred to Barclays, now 47.4 billion dollars, and liabilities being assumed by Barclays, now 45.5 billion dollars."

Now, do you see that this refers to liabilities being assumed by Barclays of 45.5 billion dollars? Do you see that?

A. I see the words, yeah, sure.

Q. And at the time that this objection was submitted, did you understand that 45.5 billion dollars to refer to the amount of Lehman's repurchase agreement obligation to the Fed?

MS. TAGGART: Objection to form.

BURIAN

A. Because I have no idea what Barclays paid the Fed, and they were different times, and I don't know -- I don't know if Barclays extended more funds over a period of time from the takeout of the Fed.

What this sentence says is we thought and we were told that the Barclays' repo obligation as of the weekend, as of that Friday hearing, was 45.5 billion. And the assets supporting it had dropped to 47.4 billion.

I know I didn't answer yes or no, but I am trying to correct the obvious misstatements or try to make sure this goes faster.

MS. TAGGART: Make sure you say what you need to explain your answer.

A. Was that helpful or you want me to answer yes or no?

Q. Hold on.

So what you're telling me, Mr. Burian, is that this sentence in paragraph 9 of the objection is saying that the committee thought that the Barclays repo obligation as of the sale approval hearing was 45.5 billion and the assets supporting it were 47.4 billion? Is that

BURIAN

If you understand the question, you can answer.

A. No.

Q. You didn't understand the 45.5 billion dollars to refer to the amount that Lehman owed the Fed under its repurchase agreement?

A. That's correct, I did not.

Q. You did not.

A. Jack, you are referring to --

Q. Are we off the record?

A. No, we are on the record.

When you asked that question, referring to what date? You keep asking about what Lehman owed the Fed. According to the affidavit, there was no Fed loan. It was a Barclays loan at that date.

And I just don't -- I'm happy to say -- you say is it yes or no and play games, but I want to get to the --

Q. Did you understand the 45.5 billion to be the amount that Barclays would pay in replacing the Fed repo?

A. I can't answer that either. No.

Q. Why not?

BURIAN

correct?

A. Yes. That's correct. What the committee thought. That's what I was told, what I thought.

Q. Now let me move on to another document. Let's mark this as the next exhibit. (Exhibit 459-B, transcript dated December 22, 2008 marked for identification, as of this date.)

Q. Exhibit 459-B is an excerpt of a transcript of a hearing before Judge Peck on December 22, 2008, and I am going to point you to a specific section of this and then ask you a question about it.

Looking at page 45 of the transcript, you see Mr. Kirpalani is speaking?

A. I do.

Q. Do you know who Mr. Kirpalani is?

A. I do.

Q. Who is he?

A. A lawyer at Quinn Emanuel.

Q. And he represents the creditors committee?

A. That is correct.

BURIAN

Q. And at the bottom of page 45, starting at line 21, when Mr. Kirpalani says, "Your Honor knows better than I, from the Friday night when you approved the sale going forward, were thereafter spun into a whole variety of additional discussions and negotiations into Saturday and Sunday. And we did submit the declaration of Mr. Saul Burian from Houlihan Lokey, who was involved -- who was intimately involved in those negotiations.

"The sale order itself made the creditors committee a party, if you will, to the transaction in the sense that it couldn't be changed without the creditor committee's consent, even an immaterial change."

And my question is, to your knowledge, was that statement to Judge Peck by the creditors committee counsel an accurate statement?

MS. TAGGART: Objection to form.

Compound.

Q. Was it an accurate statement?

A. As long as you understand what intimately involved in those negotiations means,

BURIAN

yes.

Q. And help me understand intimately involved in those negotiations.

A. I was intimately involved in all creditor committee aspects of the negotiations. But I was not intimately involved in what appeared to be all sorts of discussions and negotiations among and by other parties during that fateful weekend.

Q. So subject to that qualification, Mr. Kirpalani's statement is accurate, correct?

A. The court order, I'm told, has the terms of what changes the committee needs to look at. I think he is summarizing here the idea that if there were changes, we were supposed to -- if the company believed that there were changes, they would need to get our consent.

But the standard relates back to the order.

Q. And you were familiar with the sale order at the time it was issued? You read it?

A. At the time it was issued? Exactly what time is that?

BURIAN

Q. Did you read the sale order before the closing?

A. No.

Q. Coming back to Mr. Kirpalani's statement, I just want to make sure I understand your testimony. I think you explained to me your involvement in the negotiations. Subject to that explanation, is what Mr. Kirpalani told Judge Peck correct?

MS. TAGGART: Object to form.

A. I refer back to the sale order for what the consents were needed or not needed, but otherwise, yeah.

Q. Now, did you attend the sale hearing?

A. I -- well, which one?

Q. The sale hearing on September 19, the final sale approval hearing?

A. I attended most of it or a large portion of it.

Q. It ran into the Sabbath?

A. Correct.

Q. So I understand that you wouldn't be there during the Sabbath, correct?

A. I was not there during the Sabbath,

BURIAN

correct.

Q. You would make an attempt -- what -- do you recall at what time you left the sale hearing?

A. I mean we could back into it by seeing -- you know, 18 minutes after sunset, I would have left, but I don't remember the exact time. I was --

Q. I understand. I understand.

Do you recall whether you were present for the opening of the sale hearing?

A. Absolutely.

Q. Were you present for a recess that was taken shortly after the hearing began? If you remember?

A. I'm not sure exactly which recess you are referring to, if there was, but I was there -- I went through all of the case-in-chief, and I think I left when some parts were beginning -- some of the smaller creditors were beginning to make statements.

It was -- must have been, I'm assuming, not the beginning of the hearing. What time did the hearing start? Do you

BURIAN

on the record why I am giving a privilege instruction.

MR. STERN: Then we are going to be here longer than seven hours.

MS. TAGGART: I have reasons why I am giving this privilege instruction. If you would like not to hear them, that's OK.

MR. STERN: I just want the instruction.

MS. TAGGART: I am instructing not to answer.

MR. STERN: You are instructing him not to answer.

**Q. Did you ever -- after the closing on September 22, 2008, did you ever have a discussion with anyone from Lehman or Weil or Lazard concerning whether any aspect of the final purchase agreement was inconsistent with what Weil had represented to Judge Peck at the sale approval hearing?**

MS. TAGGART: You can answer yes or no to that.

A. Yes.

**Q. Did you have any such discussion with**

BURIAN

**Weil or Lehman or Lazard at any time between September 22 and the end of September, 2008?**

A. I don't specifically recall the exact dates. Part of the problem here is, you keep on using the phrase "inconsistent." If a contract says securities are being transferred, that's not -- that may not be inconsistent. But if I am not sure whether the securities that were actually transferred were or were not consistent, asking me very narrow questions about did I find an inconsistency in the document doesn't help anything. I honestly don't know if I should answer yes or no to that.

**Q. Well, you --**

A. I truly am trying to explain. If it helps it go faster, great. If it doesn't, I'll pay for the three seconds.

My point is, our questions were not what the document said, but how -- what actually happened pursuant to the documents. So I don't know if it was exactly between the 22nd and 23rd, but on multiple occasions we asked people from Lazard and Weil, not the privileged stuff, for reconciliations of, this provision says

BURIAN

this, what happened under that provision in order to determine whether that provision or whether the execution of that provision was consistent or inconsistent.

Does that help?

**Q. Consistent or inconsistent with what?**

A. With what we thought the judge was apprised.

**Q. What you thought the judge was told?**

A. With what the judge was told.

So --

**Q. Let me just break this down into two sections. I am going to come to what you are talking about, which is the analysis of the transfers. But right now I'm just focusing on the face of the agreement. And I would like to try to get an answer to that before moving on to the list of questions that you referred to.**

**Did you have any discussion with anyone from Lehman or Weil or Lazard between September 22 and September 30 concerning whether anything on the face of the final agreements, anything on the face of the final agreements was not consistent with what Weil had represented to**

BURIAN

**the court concerning the agreement?**

A. When you say "inconsistent," what you mean is directly opposite?

**Q. What do you understand the word "inconsistent" to mean?**

MS. TAGGART: Object to form.

Argumentative.

A. We had many conversations about, that some of these aspects were not described in detail to the court. That does not necessarily mean that they were inconsistent with the transaction that was described to the court.

**Q. So tell me about those --**

A. That's why I am having trouble with -- yes.

**Q. Tell me about those discussions in which you discussed whether specifics of the final agreement had been described to the court.**

MS. TAGGART: This is the same time period and the same people we were speaking about before.

A. Are we talking about during that weekend?

**Q. We are talking about from September 22**

**BURIAN**

through the end of September.

A. Oh, we did not have detailed conversations about that, during that period of time. Again, if it happened between 22nd or the 30th. It may have been early October when the Weil Gotshal lawyers finally got some sleep. I don't remember exactly what it was, but we would have had more general conversations regarding what exactly happened as opposed to, you know, the more detailed conversations of whether this was described in detail or not described in detail.

**Q. How soon after the closing on September 22 did you review the final clarification letter that is Exhibit C to Deposition Exhibit 26?**

A. I was pretty tired also. I don't -- I know I got it Monday, Tuesday or Wednesday. I can't recall exactly when I read it completely.

**Q. Do you think you read it the week of September 22?**

A. I certainly read portions of it during that week.

**Q. When you did that review of the**

**BURIAN**

**clarification letter, were there any provisions of the clarification letter that you thought should be brought to Judge Peck's attention?**

MS. TAGGART: I am going to -- this is after the closing? I am going to object to that answer and instruct not to answer on privilege.

If you communicated something about that to somebody, then -- that's outside the committee or your financial advisors, you can answer.

A. It is the same answer in that I read it and had questions. We were specifically told that our consent was not necessary and therefore, that this clarification letter was not a change.

To go and say to the estate that they were wrong or there was a mistake, you know, at that point in time didn't make sense. It was a question of, great, the transaction closed, tell us what happened and confirm what we were represented.

It was more review for the purposes of follow-up, not for -- no one at that point in

**BURIAN**

time, at least I did not at that point in time have, you know, an "I got you" mentality, is this consistent or inconsistent. It was, a lot happened. A lot of people knew about what happened and I don't. You know, explain it to me, so that I could determine whether it was, you know, consistent or inconsistent.

**Q. Who told you that the clarification letter was not a change?**

MS. TAGGART: Objection. You can answer if there is anybody at -- that's not the Houlihan, the committee or your counsel.

A. That Saturday night and Sunday morning, when we got the clarification letter, you know, we asked about it. We were told that this was a means of execution in order to avoid a double transfer of the securities.

The idea was to change the APA from a purchase of assets to a closeout of a repo in a manner consistent with what Ms. Fife had told the court, and that there were, you know, other provisions obviously in order to clarify the APA, and we specifically asked whether you wanted, needed committee consent to anything and

**BURIAN**

were told no.

**Q. OK. You said you were told. Who was telling you those things?**

A. Well, I said a lot of things in that answer. So the part about the committee consent, the most important conversation was probably with me and Harvey from Weil Gotshal, where we made it very clear as it got later and later Sunday that we were going to be unable to get a quorum of the committee, and there was a limit to how late we could have calls, and therefore, we were reaching the time where if committee consent were needed, it just would not be available.

And then later on, before I left for the evening, we confirmed again, saying is there any need for us to be here, do you need us to sign off on anything, and we were told that the transaction was moving forward and the committee was not necessary.

**Q. Who told you that and what did they say?**

A. Most of the conversations were in the hallways at Weil, so I'm not sitting down in



BURIAN

organized conference rooms where we introduce ourselves.

But the main conversation on both those fronts, both before the committee went to sleep and before I left, were me and, I believe Harvey. You know, Tom Roberts was there. Lori Fife was all around the place. There were corporate lawyers from Weil, but the main conversation -- really the conversation that I have a firm recollection of before I left was me and Harvey.

**Q. And in that conversation, did you discuss whether the clarification letter would create any changes that would have to be described to Judge Peck after the closing?**

A. Described to Judge Peck after closing?

**Q. Yes.**

A. No, I didn't have a conversation with Harvey about post-closing disclosure. No.

**Q. Did Mr. Miller ever indicate to you that he thought that there was some aspects of the clarification letter that would have to be disclosed to Judge Peck?**

A. No.

BURIAN

the agreement that you had as of that time that caused you to think that a further disclosure should be made to Judge Peck, concerning the words of the agreement?

A. Concerning the words of the agreement.

MS. TAGGART: Object to form.

A. It is too narrow of a question to really answer, because assuming that these words were describing businesses and assets, as we were explained, then we thought on balance, the clarification letter was fine.

Clearly, whether -- clearly a true-up or an explanation of what actually closed would be useful. I didn't form a legal view as to whether and how that would be communicated to Judge Peck.

**Q. And the true-up, would that have concerned the identity or value of assets being transferred?**

MS. TAGGART: Object to form.

A. Look at paragraph 4 on page 3 of the clarification letter.

**Q. No. Let's stick with my question.**

A. You asked me about the words of the

BURIAN

**Q. At the time, did you believe that any such disclosure would be necessary?**

A. At which exact time? I mean there was a --

**Q. At the time you had those discussions.**

A. I am going to focus on the last conversation, so for your benefit, I actually had a draft of the clarification letter at that time.

We asked the question. So obviously it was a thought in my mind as to whether or not this was or was not, but we didn't have the background or the details of what -- not what the words meant, but what was actually happening pursuant to those words, and therefore, I was concerned and asked the question, and that -- and the answer I was given was, we are going to sit down with you now and explain it to you.

And then we had that explanation, and then we confirmed that in light of the explanation, we are going to go home, do you need us, and we were told no.

**Q. OK. Focusing on the words in the agreement, was there anything in the words in**

BURIAN

letter, so I am trying to give you an example.

There is a number there on the bottom of page 3 in paragraph 4 which is an aggregate of 1.29 billion dollars. In my experience, it would be highly unlikely if at some point the judge were not informed of what exactly the aggregate consideration was actually paid for the assets.

So did I have a problem with the words on the bottom of page 3? No, I didn't think about it then, but you are asking me the question now. Did I have an expectation that they would be disclosed either in the form of filing documents with the court or saying to your Honor, good news, we closed and we got 1.29 billion dollars? Of course.

**Q. So you are talking about confirmation that the consideration was actually paid?**

A. Not confirmation. Just what the number was. Remember at the hearing, Ms. Fife said that there is still open issues. We found out that one of the issues related to, you know, whether it was pre or post commission, and that issue was ultimately settled.

BURIAN

So I would have expected -- so again, fixing that number was in my view consistent with Ms. Fife's disclosure to the court that there was going to be a relatively modest negotiation on the exact amount. The words here --

**Q. You are talking about the appraisal of buildings?**

A. Not only the appraisal. It was also whether or not you used the pre-fee or post-fee number.

**Q. For the buildings?**

A. For the buildings.

**Q. So --**

A. But they --

**Q. Let's go back to your list of questions.**

MS. TAGGART: He needs to finish.

A. I want to finish answering your question.

So your focusing on the words in paragraph 4 is a perfect example where I understood the words, I was not troubled that it was inconsistent with, to use your language, on

BURIAN

**Q. On the clarification letter --**

A. Page 1?

**Q. Exhibit C, page 1, the bottom part of the page, Section 1(a)(ii).**

A. Now I see it, OK.

**Q. "With respect to Clauses A, D and E of the definition of purchased assets in the original agreement, instead of the items referred to in such clauses --**

A. Right.

**Q. -- "A, the securities owned by LBI and transferred to purchaser or its affiliates under the Barclays repurchase agreement as defined below, as specified on Schedule A, previously delivered by seller and accepted by purchaser." That reference to the Barclays repurchase agreement, based on that reference, did you understand that the repurchase agreement collateral would be included as a purchased asset?**

A. Yes.

**Q. And --**

A. I am sorry. We are talking colloquially, not whatever definition we talked

BURIAN

the order itself, but I did have an expectation that there would be disclosure at some point of what actually happened.

**Q. Now, let's stick with this agreement that you're looking at, the clarification letter, which is Exhibit C. If you look at page 1, under the first section, purchased assets, you see that in Section 1(a)(ii) -- are you with me?**

A. I'm listening.

**Q. Exhibit C, if you could just look at Exhibit C.**

A. Give me one second, please.

Yeah. Sorry.

**Q. On page 1 of Exhibit C, this is the clarification letter, on the first page under Section 1(a)(ii), you see it says, "With respect to Clauses A, D and E of the definition of purchased assets in the original agreement, instead of the items referred to in such clauses, A, the securities owned by LBI and transferred to purchaser or its affiliates under the Barclays repurchase agreement" --**

A. Where are you?

BURIAN

about earlier.

**Q. For now going forward, let's ignore the definitions in the 30(b)(6) notice and we will define things as we go along.**

A. OK, OK. So yes, I did.

**Q. At the time, did you also, based on your experience, understand that it is common in financings like the Fed repurchase agreement for there to be a cushion or a haircut in valuing the assets in relation to the liabilities?**

MS. TAGGART: Object to form.

MS. SCHAFFER: Objection to form.

A. I was aware that repos, the amount, the amount lent on a repo was usually slightly less than the value of the securities that backed the repo. I know "lent" is not the technical term, it is a purchase and sale, but the amount extended by the repo participants.

**Q. So you understood that the value of the securities purchased under the repurchase agreement would typically exceed the amount of cash paid for those securities?**

A. Typically exceed.

**Q. Typically.**

BURIAN

A. In a normal situation.

Q. And were you aware that the Fed had advance rates or haircuts that it made available publicly?

MS. TAGGART: Object to form. Foundation.

A. I was not aware of any public announcement by the Fed as to what their repo advance rates were for these assets.

Q. Were you aware that there were sources by which you could find out the Fed's advance rates?

MS. TAGGART: Object to form. Foundation.

A. No.

Q. Did you have any reason to think that those advance rates were a secret?

MS. TAGGART: Object to form. Foundation.

A. I didn't think about it. I didn't know one way or the other.

Q. At the time, did you understand that the repo collateral that was being included as a purchased asset included that haircut?

BURIAN

answer everything after the closing. Could you be a little more specific.

Q. Is there -- there is an objection, but you can answer.

MS. TAGGART: Well, as it is, I would have to do on privilege. I wouldn't allow him to answer the question of anytime that his understanding post closing, of what he thought that it meant.

So I guess I have to object and instruct not to answer.

Q. At the time after the closing that you read this agreement, the clarification letter, I think we established that you understood that the repo collateral was being treated as a purchased asset; is that correct?

A. Yes.

Q. Did you understand that the haircut was a part of the repo collateral?

A. I told you before, no. My answer is in my affidavit. I'm not sure I understand -- I'm happy to try to get you to ask the question more properly, if you like, but my answer is in my affidavit.

BURIAN

MS. TAGGART: Object to the form.

A. No.

Q. What did you understand all the repo collateral to mean?

MS. TAGGART: Object to vague as to time.

A. It is a good point. As of what time?

Q. As of the time you read this agreement.

A. First time, post closing, preclosing? Yesterday?

Q. Post closing, when you read the final clarification letter.

A. Right.

Q. And it states, "The securities owned by LBI and transferred to purchaser or its affiliates under the Barclays repurchase agreement."

Did you understand that to mean all of the securities that had been transferred to Barclays in connection with the repurchase agreement?

MS. TAGGART: I am still going to have to object, vague as to time, and he can't

BURIAN

I thought that the repo collateral was less than the value -- the value was less than the amount outstanding on the Barclays repo.

Q. That's not what I am asking. I am not asking what you understood the value to be. I am asking whether you understood that under the clarification letter, all the repo collateral would be treated as a purchased asset.

A. You asked that several times, and I said yes, but then you asked a follow-up question about my understanding of the value.

Q. OK. So the answer is yes?

A. I --

MS. TAGGART: He needs to explain it.

A. I understood that the transaction was being modified from an asset purchase agreement where you would have to transfer securities, to a repo closeout in which the assets already held by Barclays would just stay at Barclays and not be sent back pursuant to the closeout of the repo and then transferred again. That was my understanding.

Q. Now, with respect to that category of securities which were to be listed on

BURIAN

whole transcript, and I told you that I left after what I thought was the most important part, when it was subsequently described to me as being the description of the deal by Weil. So I can't say what occurred after I left and the transcript does speak for itself.

I will tell you -- I am sorry, your question was again? I was so focused on the other parts.

**Q. Did Weil Gotshal ever tell the court at the final approval hearing that there were firm valuations for the classes of assets that were being transferred to Barclays?**

A. The asset purchase agreement talks about book value. We were told it was a book value on the Lehman books, and Lori, Ms. Fife, talked about that we now have assets of 47.4, and to us, that was -- that meant that they thought they had assets of 47.4. It sounded pretty firm to us.

**Q. We have covered the 47.4 already. What I am talking about is the entire array of purchased assets. Did Weil Gotshal ever tell the court that there were specific valuations or**

BURIAN

attempt to value what it was worth if -- you know, in an ordinary course, stable environment.

So there were three -- at that time, there were three buckets of assets. One had appraisals, but not finalized. One had a particular value, but not off of an appraisal, and the other one, there was no attempt to make an appraisal.

**Q. Let's take a look at the original asset purchase agreement, which is Exhibit A within Deposition Exhibit 26. And I want to point you to page 6, which lists a series of purchased assets.**

**I want to focus on a number of the assets that are described here. If you see, item B refers to all deposits. Do you see that description?**

A. Yes.

**Q. In your view at the time of the approval hearing, did you believe that that asset category could have value to Barclays?**

MS. TAGGART: Object to form.

Foundation.

A. Sure.

BURIAN

**appraisals prepared for each class of purchased assets?**

MS. TAGGART: Object to form.

**Q. To the best of your knowledge.**

A. To the best of my knowledge, the appraisals were not -- I don't believe that they described in particular the appraisal on the real estate yet, but Ms. Fife gave the range and informed the court that there may need to be an adjustment.

There was no appraisal of the securities. They were described as being worth a particular value, which in the context of the asset purchase agreement meant book value on the Lehman books.

And there was specifically no representation about the value of the franchise, which was being paid 250 million dollars, that was a number that was the price, and there was no -- to the best of my knowledge, no representation or appraisal other than either Miller or Ms. Fife saying if the transaction doesn't occur, we think it may be worth significantly less than 250 million, but no

BURIAN

**Q. Did you have a valuation or any representation concerning the value of that asset category?**

A. No.

**Q. It was uncertain?**

A. Yes.

MS. TAGGART: Object to form.

**Q. Looking at category C, that refers to "transferred property leases together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof."**

**At the time of the sale approval hearing, did you believe that that asset would have value to Barclays?**

A. Yes.

**Q. Did you have a valuation for that asset category?**

A. It was in the real estate appraisals.

**Q. Well, the real estate appraisals related to the headquarters buildings and data centers, correct?**

A. Yes.

**Q. Was there a valuation for the leases?**

A. We need to go back to the definition



BURIAN

Q. So --

A. What time frame are you asking me?

Q. I am asking you from the closing on September 22 through the end of September, September 30, whether at any time you had a different view than the view you just described.

MS. TAGGART: Object to form.

You can try to answer.

A. I don't recollect having a different view that we made a mistake not supporting and not objecting. I didn't -- I do remember putting on our -- putting on our tickler sheet to verify, trust and verify.

Q. And the items that you needed to verify were those considerations that you described concerning the employees, effect on the financial system; is that right?

A. No. I never said that.

Q. Let me make sure I understand your previous answer. As I understood it, you said that various credible people were saying things such as in the absence of the sale, there would be dire consequences for Lehman?

A. That's not what I said. What I said

BURIAN

was that -- that is also true. That's not what I said.

What I said was credible people were explaining to us what the transaction was and what the import of these documents meant. So that even though I couldn't verify whether what A or B or C exactly was, I had a degree of comfort that highly credible people were telling me they looked into those questions and this is what it means. And based on those representations, even though I didn't have enough information to support, I felt comfortable not objecting.

It is also true that we were told by a variety of people about the dire consequences to the world as we know it, you know, if the transaction did not close, but that's not what I was referring to, you know, when I talked about relying on third parties.

Q. OK. But those statements about the dire consequences --

A. I am sorry. And it also was not what I meant when I said trust and verify. I was not going to go verify whether the deal didn't

BURIAN

happen, you know, financial markets would have been disturbed.

When I said trust and verify, I wanted to verify that the representations as to what the deal was, is, were in fact what occurred in connection with the deal. I mean it wasn't to figure out whether or not the SEC governors would have preferred the deal to close or not. Commissioners, not governors.

Q. In forming your view that despite the lack of information the committee should not object to the sale, did you take into consideration the other factors that were being described at the time? In other words, the dire consequences for Lehman, the dire consequences for employees, the consequences for the financial system, the concerns of the federal regulators, did you take those factors into consideration?

MS. TAGGART: Objection to form. The preface misstated his testimony.

But you can answer.

A. I took those into consideration in terms of context and timing. Not in terms of

BURIAN

substance. Should I explain?

Q. Yes. What does that mean?

A. The fact that a regulator or any third party is saying I'm worried about the impact on something else, that's not -- that's extraneous to the bankruptcy estate, is relevant to the speed and timing of the transaction, but would not be a reason to compromise rights and assets of the estate. My fiduciary duty is to creditors of the Lehman estates.

But vis-a-vis timing of hey, there is a reason why we are going to throw some of the procedural protections out the window and do this in an unbelievably quick time frame and instead of doing direct diligence, you are going to rely on other people's representations, there, I did feel that those considerations as to timing were relevant.

It was also true that those timing issues also had some impact directly on the Lehman estate, vis-a-vis the desire to transfer customer accounts and bring in a SIPC trustee. The issues relating to other foreign jurisdictions and Lehman operations and a

BURIAN

concern of would the Lehman franchise be less valuable to Barclays if there were a significant delay, vis-a-vis the retention of employees and the rest.

So the factors that you provided were relevant in the time frame and procedural context of the matter, but would not alone have been enough to say, sure, you know, we don't care what happens, or give away estate assets, or the estate should assume liabilities it wouldn't otherwise have to assume.

You seem confused. I know I'm not supposed to help, but for instance --

**Q. No, just --**

A. -- one could have asked for an adjournment of the hearing, right? My options, if I were the committee, is not limited to support or object. And whether we looked for an adjournment to delay consideration of the hearing was impacted by all those issues I raised in my answer.

**Q. OK. Now, going back to the APA, page 12, on page 12, there is a continuation of a list of assumed liabilities, and item I lists**

BURIAN

**all short positions. Do you see that?**

A. Yes.

**Q. Now, at the time in September of 2008, did you recognize that those short positions might have been more profitable to Barclays to own than the long positions?**

MS. TAGGART: Object to form.

A. Did I believe that the short positions were more profitable than the longs?

**Q. Did you consider whether in those circumstances, in that week of September 2008, the short positions might be more profitable to own than the long positions? Did you consider that?**

A. We were told the opposite.

**Q. Who told you that?**

A. These were listed as liabilities, and my understanding when we met that Thursday at Weil, when the deal was presented to us, whether it was by Harvey Miller or by one of his partners or by Mark Shapiro or Jim Seery, it was a give and take.

We were told that Barclays was taking all the short positions related to the book, and

BURIAN

these were liabilities and obligations that you -- that Barclays, not you -- that Barclays was taking, and therefore, we needed to look at the net impact of the transaction, which is essentially even exchange.

The context of that conversation is that these positions were contras and not positives.

**Q. I understand these positions were listed as liabilities, but you understood at the time what a short position was?**

A. I understand what a short position is.

**Q. And did you understand that a short position in certain circumstances may be more profitable than a long position?**

A. The -- this is not just shorts, though. These are also repos, obligations. So --

**Q. I understand. I am focusing on short positions.**

A. Theoretically could a short position be positive? Yes. But then theoretically a long could be negative, if it is an option and not ownership of that security.

BURIAN

By the way, can we back up. This is as of when? Because we were told that all these shorts were closed out and that you didn't take any shorts. So is this before Thursday or after Thursday, the 18th?

**Q. Well, I'm just asking -- I was asking about your understanding based on reading the agreement.**

A. But when? My understanding reading the agreement on Friday --

**Q. Well, you understand that the short positions ultimately were not available, is what you are saying?**

A. My understanding is that Barclays did not take any short positions.

**Q. Right. So my question was simply whether at one point when it was contemplated that Barclays would take short positions, whether those positions might be under certain circumstances more valuable than the long positions.**

MS. TAGGART: Object to form. Asked and answered.

**Q. I agree.**

BURIAN

A. Specifically the answer is -- now you are asking more generally as opposed to specifically. You said before could a -- let me finish -- could a short be more valuable than a long, but now you are asking me whether I considered whether the short positions were more valuable than the long positions.

No, that was not our contemplation and not what we thought.

**Q. You didn't recognize at the time that that was a possibility?**

MS. TAGGART: Objection, asked and answered. Object to form.

A. In the aggregate, we were specifically told that the aggregate of paragraph I was a 69 billion dollars contra, and the aggregate of paragraph -- the definition of the purchased assets you showed me before, was approximately 170 billion positive.

So could there have been a single position that was a positive versus a negative? But in the aggregate this was a one -- approximately a 1 billion dollar positive differential.

BURIAN

**Q. I understand that you were told there was a liability, but my question was simply whether short positions, short positions in the aggregate could have had more positive value under the circumstances than the long positions.**

A. No.

MS. TAGGART: Object to form. Asked and answered.

**Q. That's not -- that was impossible?**

A. That was not even a remote contemplation at the time in any of the meetings or discussions that I attended. Nor would that be consistent with anything that was told to us or explained to us.

And this is a perfect example of what I described before, which is trust and verify. Which is read the -- read the agreement and understand what it says, but not have the opportunity to look beneath those words to look at and diligence it, and why we took no position at the hearing.

**Q. So let's move on to verification. You did do some verification work before the closing; is that right?**

BURIAN

MS. TAGGART: Object to form.

A. We attempted to do some verification work.

**Q. You attempted to do some verification work before the closing, correct?**

A. Correct.

**Q. Time was limited, correct?**

A. Time and cooperation.

**Q. Whose cooperation was limited?**

A. Barclays and Lehman.

**Q. What did Barclays fail to provide to you that you requested of Barclays?**

A. We requested innumerable times for a complete list of what assets were transferring, what liabilities were being assumed and what the marked values, the book values were, and as of what dates those marks related to.

**Q. Are you talking about the Lehman marks?**

A. I'm talking about the marks relevant to the transfer of those assets. Our understanding was that Barclays was not marking the Lehman assets and that the book value references in the contract were the Lehman

BURIAN

marks.

So when Lori Fife, Ms. Fife stood up in court and says a number, that was the Lehman marks against which these transfers were being measured.

**Q. So just to be clear, are you saying that you made specific requests from Barclays for information concerning Lehman's marks?**

A. To be clear, we made specific requests of anyone and everyone who would listen to us, sort of like the Old Testament prophet screaming out in the wild and no one listening, saying could we please have some understanding, a list of what assets are moving, to whom they are moving and how they are marked.

**Q. And you're saying you did not receive that information?**

A. We did not receive that information. Well, what time period, sir?

**Q. Well, I am focusing on the time period between the sale approval hearing and the closing.**

A. That is correct.

Oh, what I should actually say --

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<p>1 BURIAN</p> <p>2 <b>Q. There is no question.</b></p> <p>3 <b>A. I know, but I am finishing my answer.</b></p> <p>4 <b>What I should actually say is I never got</b></p> <p>5 <b>anything that was so described to me or Houlihan</b></p> <p>6 <b>as representing such a list.</b></p> <p>7 <b>Q. Let's mark this as the next exhibit.</b></p> <p>8 <b>(Exhibit 460-B, document Bates stamped</b></p> <p>9 <b>WGM Lehman E1592 with attachments marked for</b></p> <p>10 <b>identification, as of this date.)</b></p> <p>11 <b>(Exhibit 461-B, document Bates stamped</b></p> <p>12 <b>HLHZ11913 with attachment marked for</b></p> <p>13 <b>identification, as of this date.)</b></p> <p>14 <b>Q. Let me show you what we have marked as</b></p> <p>15 <b>461-B. And have -- 461-B in front of you.</b></p> <p>16 <b>A. This one?</b></p> <p>17 <b>Q. Yes, take 461-B. We will get to the</b></p> <p>18 <b>others.</b></p> <p>19 <b>Do you see that 461-B is a document</b></p> <p>20 <b>dated Sunday, September 21, 2008, 11:34 a.m.,</b></p> <p>21 <b>addressed from Brian Kelly at Milbank to Ann</b></p> <p>22 <b>Comisky and Brian -- and Michael Fazio?</b></p> <p>23 <b>A. Yes.</b></p> <p>24 <b>Q. And what do you understand this</b></p> <p>25 <b>material to be?</b></p>	<p>1 BURIAN</p> <p>2 A. The material attached to the e-mail?</p> <p>3 MS. TAGGART: Objection, vague as to</p> <p>4 time. Do you mean sitting here today or</p> <p>5 then?</p> <p>6 <b>Q. Do you recall reviewing this material</b></p> <p>7 <b>at the time it was received on September 21?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Do you know whether others at Houlihan</b></p> <p>10 <b>did?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Who conducted that review?</b></p> <p>13 A. For the most part, Michael Livanos.</p> <p>14 <b>Q. And did Mr. Livanos report to you</b></p> <p>15 <b>concerning his review of this information?</b></p> <p>16 MS. TAGGART: This is just asking for</p> <p>17 a yes or no.</p> <p>18 A. Who is "you"?</p> <p>19 MS. TAGGART: So I think he is</p> <p>20 asking --</p> <p>21 <b>Q. You personally.</b></p> <p>22 MS. TAGGART: -- Mike Livanos to you,</p> <p>23 Saul Burian.</p> <p>24 A. Me personally.</p> <p>25 <b>Q. Yeah.</b></p>
Page 128	Page 129
<p>1 BURIAN</p> <p>2 A. Not as a 30(b) rep.</p> <p>3 No.</p> <p>4 <b>Q. Did Mr. Livanos report to others at</b></p> <p>5 <b>Houlihan concerning the information contained in</b></p> <p>6 <b>this exhibit?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And what did he report?</b></p> <p>9 MS. TAGGART: I am going to object and</p> <p>10 I think that calls for privileged</p> <p>11 information on work product. I am willing</p> <p>12 to have some testimony about that</p> <p>13 discussion, but I am going to need to have</p> <p>14 an agreement from you that that doesn't</p> <p>15 waive privilege. I think there is a work</p> <p>16 product privilege that can be waived about</p> <p>17 that discussion.</p> <p>18 THE WITNESS: So I can answer, but it</p> <p>19 doesn't --</p> <p>20 MS. TAGGART: I need an agreement from</p> <p>21 him that that's not going to waive</p> <p>22 privilege.</p> <p>23 MR. STERN: I have no idea what you</p> <p>24 are talking about with privilege.</p> <p>25 <b>Q. All I am asking is, with respect to</b></p>	<p>1 BURIAN</p> <p>2 <b>the information that's in Exhibit 461-B, if</b></p> <p>3 <b>Houlihan ever developed an understanding</b></p> <p>4 <b>concerning what this information was.</b></p> <p>5 MS. TAGGART: That's a different</p> <p>6 question. I would object to form.</p> <p>7 You can answer that yes or no to the</p> <p>8 extent you understand it.</p> <p>9 A. Yes.</p> <p>10 <b>Q. What was that understanding?</b></p> <p>11 MS. TAGGART: That's -- I am sorry,</p> <p>12 objection to anything past the closing. You</p> <p>13 can say what was your understanding of</p> <p>14 Houlihan's understanding preclosing of what</p> <p>15 this information was.</p> <p>16 A. It changed over time. But our</p> <p>17 understanding was that this was a preliminary</p> <p>18 list of securities as of an indeterminate date</p> <p>19 that may or may not go over to Barclays with</p> <p>20 marks that were as of a -- that were as of a</p> <p>21 date that we weren't sure. At different times,</p> <p>22 Monday, Tuesday, Wednesday or Thursday, unclear</p> <p>23 as to what the marks represented.</p> <p>24 So that's what we understood this</p> <p>25 document to be.</p>



BURIAN

A. No.

**Q. Houlihan.**

A. No. As I said to you before, we were specifically told that these were not the market values of these assets as of that time.

**Q. And who specifically told you that?**

A. The last conversation on which we relied on was a conversation with Michael Klein, Harvey Miller, I believe Tom Roberts was there, Mike Fazio.

**Q. Did you ask what the source of these market value figures was?**

A. Houlihan did ask.

**Q. And what was Houlihan told?**

A. They were told these were old marks from Lehman of securities that may or may not be still at Lehman.

**Q. Did you understand that this was a list of securities that Barclays was to have received in connection with replacing the Fed repurchase agreement?**

A. That is a nuance or detail that I am not 100 percent sure. The conversations were not about the repo. The conversations were what

BURIAN

is Barclays getting.

Obviously, when you look at the clarification letter, which we did not have at the time, you could say these were backing the repo or should have been backing the repo in the sense of the cash substitution, but I don't think that we understood Sunday morning that nuance.

Our understanding was this was a list of assets that was a working list of assets that some large portion of were going to be transferred to Barclays.

**Q. You didn't have a draft clarification letter by the time you left in the early morning of September 22?**

A. Oh, yeah, by then I did. But you were asking about our initial understanding of what this document represented, what this list of securities represented. And that's what I was answering.

**Q. Did there ever come a time before the closing when Houlihan understood that this list was intended to represent securities to be transferred to Barclays in connection with**

BURIAN

**replacing the Fed repo?**

A. No.

**Q. Did anyone from Houlihan ever sit down with anybody from Lehman or Barclays or Weil or Lazard and review this list with them?**

A. We tried. There was a very excited environment at the time. There were huge meetings that we were asked not to attend that appeared to be or were described to us to relate to JP Morgan holding back -- someone used the word "stealing," someone used the word "selling," someone used the word "set offing" -- securities that we were led to believe or we thought meant some of these securities, and with all the hubbub going around about what actually was being transferred, in that context, we would say to people what -- where are you, what are being transferred?

At one point in time, we finally did, we, Houlihan finally did sit down with Jim Seery and with -- there were maybe some of his junior people there, and said OK, we got this list, we have looked at this list, we are confused by the list, explain it to us.

BURIAN

And we did make several comments about the list, and he responded. It was a relatively short, though, almost like doing us a favor by giving us -- you know, giving us some time on that busy night.

**Q. What comments did you make about the list, or did Houlihan make about the list?**

A. I was not --

**Q. What comments did Houlihan make about the list?**

A. Right. So I will give you the substance of the comments, as they percolated up to me generally, and in light of my following up with them.

But our comments were, do we now know which -- whether this is the list of securities -- have you been able to determine what actually is there and being transferred? Is this something we can rely on as the core business securities?

The second issue was -- and this was the main issue -- when were these marks as of? And our understanding was that these marks were from earlier in the week. Can you explain all

BURIAN

the noise we are hearing about how these securities dropped in value? Because when you look at a variety of the categories, it looks like they went up in value or stayed stable, so can you explain to us what is going on. What is the concern, what is the give and take, what's going on.

**Q. And who had this conversation?**

A. This was Brad Geer and Mike Fazio with Jim Seery and his juniors.

**Q. Now --**

A. Well, you asked generally did we have any -- that percolated up to me, and then that led to several hours later, you know, my telling Harvey, I know we are very busy, I know there is a lot going on and we are only the committee, but we need an explanation of what is happening, partly because of concerns that were percolating up about what's going on here.

And that led to what we still believe is the single most important conversation, the one with the principals right before we left.

**Q. That was a conversation with Harvey Miller?**

BURIAN

A. Harvey Miller, Michael Klein, et cetera.

**Q. Anybody else?**

A. I told you before I believe Tom Roberts was there. I believe Lori Fife was in and out. Mike Fazio was the Houlihan person with me.

**Q. Now, before you left the building, before you left Weil in the early morning hours of September 22 --**

A. It could have been late morning hours.

**Q. Or late morning hours, were -- was Houlihan invited to stay through the closing, in order to review and finalize the schedules?**

A. Definitely not to review and finalize schedules. Was I invited to stay? I was welcome to eat as much pizza as I liked. I can't tell you how many football games I watched during the first month of Lehman sitting in rooms being ignored by lawyers, you know, starting on the 19th through October.

We were specifically disinvited from many of the important meetings. We asked to sit during the negotiation by Tom Roberts of the

BURIAN

clarification letter, where the estate was going through the issues, and we were told you are not permitted to.

I walked into one of the very large meetings and just sat down in a chair and listened to the SEC, to the DTC, Barclays, and Lehman and JP Morgan go in and out, everybody yelling at JP Morgan about issues. I certainly was not invited, but they were not so impolite as to demand that I leave. Although there was a time when people took a break, and we purposely stayed in our seat so we didn't have to walk in the room again and be asked to leave.

So to say invited is a tough one. We spent so much time begging to be paid attention to, that to them, if we wanted to sit there, we were welcome, but we were not included in discussions. So --

**MR. STERN:** Mark this as the next exhibit, please.

A. If you are asking me was I invited, I would say no. Was I welcome to hang around, the answer was yes.

(Exhibit 462-B, document Bates stamped

BURIAN

MTHM5739 marked for identification, as of this date.)

**Q. We have marked as Exhibit 462-B an e-mail exchange between Harvey Miller and Luc Despins and others, and I am just going to focus on one part of the message from Harvey Miller.**

**In his e-mail to Mr. Despins and others, September 25, 10:28 a.m., he states, "You were invited to stay Monday a.m. as the schedules were reviewed and finalized."**

**Is it your testimony that that is not accurate?**

A. My testimony is I'm defining what "invited" means. Harvey was not involved in -- to the best of my knowledge, in these schedules, and I think that anyone who was there would recollect that we were certainly not involved or invited to finalize schedules and be there.

I think that we were welcome to remain on the floor, to walk around the 25th conference center, eat as much popcorn as we liked, and to see people exchanging schedules or signing documents, and I was clear that I felt welcome to stay, but was I invited to actively

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<p>1 BURIAN</p> <p>2 Q. If you can answer my question, we will</p> <p>3 get through this a lot faster.</p> <p>4 My question is, do you recognize this</p> <p>5 material as including schedules that Milbank</p> <p>6 received and Houlihan ultimately received after</p> <p>7 the closing?</p> <p>8 A. Are you asking me if I got this after</p> <p>9 the closing?</p> <p>10 Q. Did Houlihan receive this?</p> <p>11 A. I can't look at every single page, but</p> <p>12 yes, Houlihan got a list from Milbank of what</p> <p>13 Weil sent to Milbank of the not final list of</p> <p>14 assets that purportedly went across or in the</p> <p>15 repo transaction remained at Barclays.</p> <p>16 Q. Did Houlihan understand what these</p> <p>17 schedules were?</p> <p>18 A. I told you that we understood them to</p> <p>19 be exactly what I said, a list of indeterminate</p> <p>20 date with indeterminate marks as of an unknown</p> <p>21 date of assets that comprise -- that was not the</p> <p>22 final list of what went over to Barclays.</p> <p>23 Q. Did you understand -- did Houlihan</p> <p>24 understand that the first attachment was a</p> <p>25 preliminary version of Schedule A to the</p>	<p>1 BURIAN</p> <p>2 clarification letter?</p> <p>3 A. We understood that the first part was</p> <p>4 a preliminary schedule of Schedule A to the</p> <p>5 clarification letter relating to the collateral</p> <p>6 on the repo.</p> <p>7 Q. Did Houlihan understand that the</p> <p>8 second part was a preliminary Schedule B to the</p> <p>9 clarification letter?</p> <p>10 A. We did.</p> <p>11 Q. And did Houlihan ask any questions of</p> <p>12 Lehman concerning these lists?</p> <p>13 A. I can't tell you it was directly</p> <p>14 related to this list, but it is the same</p> <p>15 questions that we asked repeatedly over that</p> <p>16 time frame from the closing until today.</p> <p>17 Q. Did Houlihan compare the Schedule A</p> <p>18 attached to 460-B to the Schedule A it</p> <p>19 previously received as reflected in 461-B?</p> <p>20 MS. TAGGART: When?</p> <p>21 Wait. Don't answer yet.</p> <p>22 When? Are you saying at any time? I</p> <p>23 need to know for my privilege objection.</p> <p>24 Q. Did Houlihan compare the Schedule A in</p> <p>25 460-B and Schedule A in 461-B at any time after</p>
Page 152	Page 153
<p>1 BURIAN</p> <p>2 Houlihan received 460-B?</p> <p>3 MS. TAGGART: I will object on work</p> <p>4 product grounds and instruct you not to</p> <p>5 answer as to the internal analysis that</p> <p>6 Houlihan did of the schedules.</p> <p>7 MR. STERN: Why don't we stop for</p> <p>8 lunch. Let's go off the record.</p> <p>9 THE VIDEOGRAPHER: Time is 1:01 p.m.</p> <p>10 We are now off the record.</p> <p>11 (Recess)</p> <p>12 (Continued on next page)</p>	<p>1 BURIAN</p> <p>2 AFTERNOON SESSION</p> <p>3 1:41 p.m.</p> <p>4 THE VIDEOGRAPHER: The time is the</p> <p>5 time is now 1:41 p.m. We are now back on</p> <p>6 the record.</p> <p>7 BY MR. STERN:</p> <p>8 Q. Mr. Burian, this morning, I believe</p> <p>9 you referred to your approach as one of trust</p> <p>10 and verify. Do I have that right?</p> <p>11 A. Correct.</p> <p>12 Q. What did Houlihan do after the</p> <p>13 closing to verify the information it had been</p> <p>14 given?</p> <p>15 A. In what period of time?</p> <p>16 Q. After the closing.</p> <p>17 A. Well, there are different periods of</p> <p>18 time.</p> <p>19 Q. Go chronologically.?</p> <p>20 MS. TAGGART: Well, object to form.</p> <p>21 You can answer what you did with</p> <p>22 anyone outside of Houlihan or the committee,</p> <p>23 and why don't we take it up through</p> <p>24 December, and if he wants to go on after</p> <p>25 that, we will take it one at a time.</p>

BURIAN

A. The main thing we did was to request reconciliation from the company as to what exactly occurred in order to be able to verify that the representations were true and that what happened was consistent with the court order.

At that point in time, we fully expected -- we did not expect there to be any problems. We thought that what we were concerned about, there must be logical answers for and there was not great concern or urgency and we also knew that as an official committee and a more normal environment, we would have the opportunity, the debtor would be responsive now that the crisis was over.

So for the most part, in the October and November time frame, it was mainly asking for reconciliations of and getting, you know, a better understanding of what exactly Barclays got and did not get.

Obviously, at some point in time, you file, someone filed, maybe the SIPA trustee filed a settlement motion which described the transaction by the affidavits, by the Barclays

BURIAN

and other parties to that transaction and that took it up a notch. That made us nervous because then we were much more concerned because there seemed to be facts that contradicted what we had heard.

We still expected there to be perfectly rationale explanations, so during that period of time, I believe we started interacting based on the judge's direction directly with Barclays and its representatives through Cleary Gottlieb, its law firm. That's when we met for the first time in an effort to --

**Q. February 3?**

A. That sounds right.

**Q. Now, let's just go back in time to the week after the closing. The period between September 22 and September 30. What verification efforts did Houlihan undertake in that period of time?**

A. To the best of my knowledge, we merely wanted to get a complete and final list of what exactly -- what the documents were. As you see, you gave me an exhibit earlier in the morning

BURIAN

that was saying, well, here is a preliminary list and I'm sure that either directly or indirectly, we would have said OK, the deal closed, where is the final list.

But other than asking for verification of what transferred and, you know -- we probably did not do much.

**Q. Were you aware that on September 30, Weil filed with the court the final versions of Schedule A and Schedule B?**

A. I don't remember the exact date, but I do know at some point schedules -- at some point, the document you handed me as an exhibit was filed with the court. You probably know the date.

But at some point the schedules were filed, although that was not what we asked for in the sense of that was a redacted version for public consumption. I don't remember if it was under seal, but I think the marks were all off, it was not directly responsive to what we were looking for.

**Q. At some point, at some point in October, did Houlihan meet with Alvarez & Marsal**

BURIAN

**to get more information concerning the asset transfers?**

A. To Barclays?

**Q. Yes.**

A. We never met with Alvarez & Marsal specifically about the asset transfers. We met with Alvarez & Marsal about a broad variety of topics on a consistent basis. There were meetings where Barclays issues were raised, but it wasn't -- the purpose of the meetings were not to talk about Barclays.

**Q. Did either Houlihan or FTI, to the best of your knowledge, ever receive information from Alvarez & Marsal concerning the assets that had been transferred to Barclays?**

A. That's a very broad question because it could relate to a lot of different pieces. So it is hard.

**Q. Let me try to make it more specific.**

A. I'm in a meeting --

**Q. Let me try to make it more specific.**

**(Exhibit 463-B memo dated October 6, 2008 marked for identification, as of this date.)**



BURIAN

**Q. Let me ask a new question. What did Houlihan do in October 2008 to dig into questions relating to this line negotiated 5 billion dollar reduction?**

A. At my direction and supervision, we renewed our request for a reconciliation of what exactly was transferred to Barclays, when it was transferred, what the Lehman marks of those assets were, and as of what date.

**Q. And in October of 2008, did you get responses to those inquiries?**

A. I don't remember specifically when we got responses, how. I know there was a catty sort of response at Weil at one point, why do you care, the transaction closed, the appeal period is over, something like that. But generally speaking, I'm sure there was back and forth, but I do not remember receiving any reconciliation or any, you know, global answer to the questions we were asking.

**Q. If you didn't receive the information, did you or the committee consider going to the judge to ask for expedited discovery concerning these questions?**

BURIAN

MS. TAGGART: Object to form and privilege and I am going to instruct not to answer on attorney/client and work product. So don't answer.

**Q. If you felt there was information that was important information you needed, did you personally realize that you could go to the court and request the court's assistance?**

A. Yes.

**Q. Did you do anything to request the court's assistance?**

A. Obviously, it is up to counsel to make these decisions. But in my view, there was nothing that would warrant expedited transaction because the transaction closed, security is probably not there anymore. Barclays was good for the money. So if there was a mistake and money had to be returned, that's not the type of thing that you would run to court with your hair on fire saying there has to be an expeditious resolution.

We also were dealing with an estate that was beleaguered by a number of issues that we had never seen before in a

BURIAN

restructuring where the senior parties at Weil and others were burning night after night and, therefore, to take what we hoped was merely going to be a reconciliation of what happened in a manner consistent with the court order to the level of running to a judge to say it has got to be dealt with today seemed disproportionate and unnecessary.

**Q. So a 5 billion dollar reduction did not rise to the level, in your view, as something worth bringing to the court's attention?**

MS. TAGGART: Object to form, misstates the testimony.

A. Oh, no -- that's completely --

MS. TAGGART: Argumentative.

A. That's completely not what I said.

**Q. Let's go back to October of 2008.**

A. I want to finish my answer.

**Q. Let me ask the question.?**

MS. TAGGART: Again, he needs to finish his answer to the question that you posed.

BURIAN

MR. STERN: I think he answered?

MS. TAGGART: No, he didn't answer.

Finish your answer.

**Q. Go ahead.**

A. That's --

MS. TAGGART: Do you want to hear the question again?

THE WITNESS: Sure.

MS. TAGGART: "So a 5 billion dollar reduction did not rise to the level, in your view, as something worth bringing to the court's attention?"

A. Five billion dollars is an enormous amount of money and it is certainly something that we will take very careful attention to, and if we believe we are owed, we will bring to the court's attention to collect.

The question that I was answering was whether or not at that time, we thought expeditious discovery was something that I personally would recommend to counsel and to the committee and what I answered was that at that time, our expectation was we were not owed, that no one had taken improperly 5

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billion dollars. Frankly, even at that time, I found it hard to believe that someone would misrepresent to the court or that people would not tell counsel what the full transaction was and, therefore, that the judge would not be apprised of something as important as 5 billion dollars.

And therefore, even then, my assumption as a supervisor of the assignment was that we, at the direction of the committee, merely had a bookkeeping reconciliation and we would write a report that would just balance the books and we would be done. There was confusion, but that there wouldn't be any real serious problem here.

**Q. Now, I believe you said that when you saw this reference to negotiated a 5 billion dollar reduction, it made you nervous, is that right?**

A. That is correct.

**Q. And it was something that you felt you needed to dig into, is that correct?**

A. It was something that confirmed to me the need to get the reconciliation done and make

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sure that the transfers were as described.

**Q. But it is not something that you felt in October 2008 warranted an effort to enlist the court's assistance in getting further information?**

MS. TAGGART: Object to form, mischaracterizes his testimony and asked and answered.

A. At that time, I had the expectation of cooperation. There was no reason to go to Judge Peck.

**Q. And did you get cooperation in the month of October?**

A. Again, I told you I think of these time periods in buckets and not in particular days and I was getting enormous cooperation in the month of October from the debtor on a myriad of issues worth many, many billions of dollars besides Barclays.

So you have to look at cooperation in a broader context when you want to criticize a debtor estate or demand a court order for expeditious discovery. So the answer is I was getting a lot of cooperation.

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BURIAN

Did I get answers to this particular question in October? Well, I still haven't gotten the answers so the answer is no.

**Q. Your testimony is as of today, you still haven't gotten the answers?**

MS. TAGGART: Objection, he just said his testimony. I object to form and argumentative.

If you want it say it again, you can.

A. As of today, to the best of my knowledge, I have never received a reconciliation of what was originally part -- assumed to be part or contemplated to be part of the transaction as signed on that Tuesday and described that Wednesday in court which got the 70 billion and 69 billion. I never got a reconciliation of what exactly was intended by the numbers Ms. Fife said in court and what the basis of that was and whose marks they were as of what date.

I have never received the bridge between the 70 and the -- now I am getting a little confused, if I am wrong, the 47.4 number, I think, as to how much of that was

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purported to be, as she described and everyone was saying in conference rooms, market deterioration in the portfolio as compared to closeouts or securities that turned out not to have been returned to Lehman. Nor have I even received, to the best of my knowledge, even the most simplest request of what exactly did go over and what were the marks on that date that they went over.

So I haven't gotten, to the best of my knowledge, even the simplest stuff, let alone what we really need to write the memo and be done.

**Q. In October, did you request an opportunity to discuss those questions with Ms. Fife or Mr. Miller?**

A. I don't remember if it was done through a formal invitation or request. We said in meetings -- at that point in time, I was spending many, many, many nights with Ms. Fife working on a variety of things and in those meetings, we would always -- we would say periodically where are we on the reconciliation,

BURIAN

when are we getting those documents, how is it going.

**Q. Did you ever ask Ms. Fife what the 47.4 represented in relation to the 70? Or any of those other figures that you just mentioned?**

A. Ms. Fife wouldn't be the right person to ask for the back-up for it because she said in court -- and I believe, you know, either she or someone else at Weil said to us that was the numbers we got from our clients as to what was available to be transferred.

Our assignment was not, you know, repeat to me that you repeated numbers from Lehman. Our assignment was to go beyond what Weil was told and balance the book.

At that point in time, there was absolutely no great urgency. The expectation was this was going to be fine and we would get the numbers and we would move on. It wasn't like we need to go track an asset that was a melting ice cube, that value was being lost. What was done was done and we expected a explanation, and if the explanation didn't comport to what was supposed to happen, we

BURIAN

felt confident we would be able to get the assets back.

**Q. Do you remember on February 3, 2009, you came to these offices and met with certain executives from Barclays and certain lawyers from Barclays?**

A. I believe you were there.

**Q. And you had an opportunity to ask questions concerning the transaction?**

A. We did.

**Q. After that meeting, did you or anyone else from Houlihan raise any follow-up questions?**

A. Sure.

**Q. Who did you call?**

A. Well, we were not allowed to call Barclays directly. We were told not to.

**Q. Did you ask for a follow-up meeting?**

MS. TAGGART: Wait, wait. He is still finishing his answer.

**Q. Did you ask for follow-up meeting?**

MS. TAGGART: He is finishing his answer to the first question.

A. I understand the communications were

BURIAN

through counsel. We followed up by asking for information and I remember reviewing one or two letters in that regard and I remember the conference call with Lindsey Greenfield that I believe it was either before or after that meeting where I once gain explained what I was trying to do, what we were trying to do.

It was not hostile. We just wanted to write a report and be done because we assumed there were reasonable answers, and so my understanding from the -- again, I told you there were buckets. So there was a bucket of times from September to the filing of the motion in December. You're now asking about the second bucket of time from December through mid February, right?

**Q. Let me just ask you a specific question. When you were talking about this reference, Exhibit 464-B, to a 5 billion dollar reduction.**

A. Correct.

**Q. At that meeting on February 3, 2009, did you ask Barclays' executives any questions concerning that issue?**

BURIAN

MS. TAGGART: Which meeting is that?

**Q. February 3, 2009 meeting.**

A. The Barclays executives at that meeting, to the best of my knowledge, said they were not involved in any way in the negotiations of the transaction, but had two roles; one was to compare taking the assets and hedging them, and the other one spoke a lot about the mechanics of transfer.

At that meeting, we specifically asked about negotiations, development of marks and were told that they were not involved.

I also think we followed up and said whose marks were they that they were taking these assets at and I believe they were told, but I can't -- I can't tell you with certainty who said it, but I think we were told that they were the Lehman marks.

But again, the three individuals from Barclays were very clear at that meeting they were not -- that's why we followed up and asked for meetings with the former Lehman CFO who is now a Barclays employee to talk about developments of marks.

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BURIAN

So indirectly -- so to answer your question with clarity and specificity, specificity, sorry, we asked about marks and who developed them, but it became obvious those were the wrong people to ask those details to.

**Q. Again, referring to 464-B and this reference to a 5 billion dollars reduction, did you understand that 5 billion dollars to relate to the repo or to something else?**

MS. TAGGART: Objection, foundation.

MS. SCHAFFER: Objection to form.

A. It is on the line of repo. Looking at it now, it looks like it relates to that line. But I honestly had -- I, to make this go quicker, I understood the 5 billion reduction to relate to marks on securities that were purportedly transferred to Barclays.

I wasn't thinking whether it was the repo assets or not, because it was a Schedule A and Schedule B, but it is on the same line as the Schedule A, what looks like Schedule A type assets.

**Q. You didn't know whether that figure**

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**related to the haircut in the repo or whether it related to something else?**

MS. TAGGART: Objection, form.

**Q. Is that fair?**

A. I certainly had no idea. The word "haircut" never came up.

**Q. And you never asked?**

A. OK, are you talking about at the February meeting with you?

**Q. I am talking about October.**

A. Or talking about the committee meeting with the committee?

**Q. I am talking about October. This presentation by Alvarez, Exhibit 464-B.**

A. The word "haircut" never came up, to the best of my knowledge, at the committee meeting with Alvarez.

**Q. But I think you testified earlier that you were generally aware that the purchase agreements typically involve a haircut, is that right?**

MS. TAGGART: Objection, asked and answered, misstates the testimony.

**Q. Is that right?**

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A. What I said before, I said my understanding was this repo was short collateral. But generally speaking, repo participants will lend or advance less than the full value of the securities.

**Q. And you were given information that JP Morgan had marked the repo collateral at 49.9 billion, is that right?**

A. Nope.

**Q. You were not given that information?**

A. Nope. We talked earlier that the only person who ever told me about JP Morgan marks is you.

**Q. You were given information that somebody had marked the repo collateral at 49.9 billion, correct?**

MS. TAGGART: Object to form.

A. Yes, we were told at some point in time there was a bucket of assets to be transferred to Barclays or retained by Barclays that had a Lehman mark of around 49. something billion dollars.

MR. STERN: Let's mark as the next exhibit this document.

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(Exhibit 466-B, document Bates stamped HLHZ 35872 through 74 marked for identification, as of this date.)

**Q. My only question about 466-B is whether this is a document you recall seeing?**

A. I don't have a specific recollection about this e-mail. October 10?

**Q. Let's take a short break.**

THE VIDEOGRAPHER: The time now is 2:33 p.m., we are now off the record.

(Recess)

THE VIDEOGRAPHER: This is the start of tape number 4. The time is now 2:43 p.m. We are now back on the record.

**Q. Let's go back to September 17, the Wednesday I believe you testified that Houlihan was first engaged, at least informally. At that point in time, did you receive the sale motion that Weil had made?**

A. At that point in time, did I receive it?

**Q. Yeah.**

A. I already had it.

**Q. You had it. OK. And you reviewed**



BURIAN

that?

A. I did.

Q. As of that date, the 17th, were you aware that Barclays had issued a press release and had an analyst call concerning the transaction?

A. I can't tell you that I knew that the 17th. I don't remember if I knew it on the 17th. I don't think -- I don't know if I knew it on the 17th.

MR. STERN: All right, let's mark this as the next exhibit.

(Exhibit 467-B, document Bates stamped HLHZ 16856 through 57 marked for identification, as of this date.)

Q. I have shown you the document that we have marked as 467-B, and before you take a look at it, let me just tell you where I am going to focus you on, then I will give you a chance to review it.

First I am going to ask you who Ann Marie Miller is. And then I am going to focus you on the first two paragraphs on page 1 of this exhibit and then on the second

BURIAN

page, the 6th and 7th paragraph.

A. OK.

Q. Is this something -- well who is Ann Marie Miller?

A. Ann Marie Miller works for me. She is an officer, a junior officer in the group who has been active in the Lehman matter.

Q. Do you recall seeing this document on or around September 17?

A. Yeah, I -- I don't remember seeing this e-mail in particular. I'm not on it. Are you asking me about the e-mail or the press release that's copied on the e-mail?

Q. Well, the substance of the e-mail?

A. I mean, I was in the room. I knew -- I don't have a specific recollection of receiving a copy of this news article.

Q. OK. Let's turn to the second page.

A. Obviously Houlihan had it, Ann Marie had it.

Q. Yes, looking at the second page, the sixth paragraph down states, "For Barclays, the deal will have an immediate positive impact. Expected to add to earnings in the first year

BURIAN

and will provide a very high return on investment, Varley said. The deal would also lift Barclays' capital ratio even before the bank completes a planned capital injection alongside the deal because of a negative good will adjustment from the deal, amounting to about 2 billion dollars after tax."

That information that I just read, is that information that you were aware of on or around September 17?

MR. SNOO:: Object to form.

A. Not the 17th itself. I got the -- I saw either a summary or the press release itself or that information about those statements sometime the morning of the 18th to the 21st. I don't remember exactly when I saw this.

Q. Do you recall whether you were aware of this before the sale approval hearing?

MS. TAGGART: Object to form.

A. My memory is that I was given this Saturday night, the 20th, is my best recollection, but I can't be sure. I just honestly don't know. I wasn't -- the problem is I wasn't in the office and didn't have access to

BURIAN

e-mail for an extended period of time.

So my -- I was in the office Friday morning, but I was doing other things. We can talk about that if you want later, but I -- I just -- I know I knew it, these quotes. I remember talking about knowing these quotes on the 20th -- I mean on the 21st and I believe I got them on the night of the 20th. I don't have any firm recollection before that.

Q. Was the fact that Barclays had announced that it anticipated a negative good will adjustment of 2 billion dollars after tax something that you considered at the time to be a basis for objecting to the sale?

MS. TAGGART: Object to form.

A. A basis, that alone a basis for objection? No.

Q. Let's move to the 18th of September, which was a Thursday. And I'll ask you if you can tell me what meetings and conversations you took part in -- that is, you personally -- on that Thursday, September 18, in connection with the sale transaction.

**BURIAN**

A. "In connection" is very broad, but the main thing was, we had an organizational meeting at Weil where the committee advisors sat down with the Weil and Lehman teams in a big room, chaired by Harvey, and the purpose was, the main purpose of the Weil Gotshal and Lehman teams were, we know you only got retained and this is your first meeting, but we have a hearing tomorrow to approve the sale. And there was a clear understanding that you are not going to get to do much and we are going to tell you what we did and that's going to have to be enough.

So we spent time at that meeting going through some of the history and some of the details of the transaction. We also talked about other things at that meeting beyond Barclays. So that was the main opportunity or meeting with representatives of the estate about this transaction.

Obviously the transaction -- you asked a very broad question. The transaction came up at other subsequent meetings either directly or indirectly.

**Q. During the day on the 18th, let's say**

**BURIAN**

**from 8 a.m. to 6 p.m., were you at Weil Gotshal for that entire period?**

A. No.

**Q. You were there for meetings or a meeting?**

A. I don't know how you define "meeting." In bankruptcy land, meetings sort of never end. They sort of move from one to the other.

**Q. That's my question.**

A. Yeah, we met, I spoke to my guys. We met with FTI and Milbank, started comparing notes of what was going on. We had a big meeting that all the estate reps came in. I'm sure we had a huddle thereafter. And at some point, you know, I left Weil and actually went to Lehman itself.

**Q. While you were at Weil for the meeting or meetings that took place there, what were you told in connection with the Barclays transaction?**

A. I can't repeat everything verbatim. I can tell you that we were given a balance sheet which I have seen as an exhibit somewhere that was -- that was produced by someone. And we got

**BURIAN**

the whole speech about how the world rests on this transaction closing, and the Fed, the Treasury and everyone else.

We had a long conversation about, you know, the fact that there were no alternatives, and this made sense, and that Barclays is getting a great deal because they are getting a franchise asset, you know, of the whole Lehman trading division for only 250 million, but it is worthless to us if we don't do the deal. So don't look in their pocket, look in your own pocket.

We had a whole discussion about what the company was trying to do to finalize timing-wise and to -- what was left open to negotiate and what were the hurdles to closing and then we had someone walk us through the economics of the securities transfer.

**Q. Now, given your experience in restructuring and in bankruptcy-related work, I assume that you had existing relationships with a number of people who were involved in these meetings?**

**BURIAN**

A. I knew many of the people in the room.

**Q. You knew some of the people from Weil?**

A. I knew -- yes.

**Q. Were people from Lazard at any of these meetings?**

A. You know, it's funny, they really played, in correlation to us, a very small role. I don't -- again, it is like the answer to the other question about the Alvarez & Marsal meeting where I said I don't remember them being there, but my gosh, that's the kind of meeting they would be at. I don't know for sure. I don't recall. I would assume they were, but I don't know.

**Q. Did you know Barry Ridings from previous work?**

A. Sure. I don't remember if Barry was there or not.

**Q. And you knew Jim Seery from prior experience?**

A. I knew Jim Seery.

**Q. And on the 18th, am I right that in addition to this larger meeting, what you and your team really wanted to do was to talk to Jim**

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**Q. Yes.**

A. He was not part of those either.

**Q. Do you know whether Eric Siegert had any separate conversations with Jim Seery about the transaction?**

A. I have not been informed that there is anything, meaning in person or by telephone.

**Q. By phone?**

A. Not by -- I mean, obviously there is an e-mail here, but not --

**Q. Well, Siegert was not in New York City?**

A. Correct. Thursday he was.

**Q. Oh, he was?**

A. Thursday he was and, therefore, they clearly communicated at the big Weil meeting. He was at the meeting and I'm sure Eric must have said something, I don't remember. But to the best of my knowledge, there was no substantive follow-up diligence meeting that Eric was part of.

**Q. OK, with Jim Seery. All right. So this call with Jim Seery took place the evening of the 18th around 9 p.m., is that right?**

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**Q. We will take a look at your notes.**

MR. STERN: Let's mark this as the next exhibit.

(Exhibit 472-B, document Bates stamped HLHZ 38187 through 191 marked for identification, as of this date.)

**Q. What is the document that we have marked as 472-B?**

A. Looks like pages of notes I took the evening of the 25th through the morning of the 26th.

**Q. I am sorry, you mean the 18th--**

A. I am sorry, the morning -- the evening of the 18th through the morning of the 19th, I apologize.

**Q. That's OK. Aside from these notes, did you take any other notes concerning the transaction at any time from the 17th through the 22nd?**

A. I definitely remember writing things down. But they were not -- like, for instance, the answer is I -- there is nothing that I have or could find that I haven't given to counsel and been reviewed by them. I do have a

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BURIAN

A. Thursday night.

**Q. OK. Where were you Thursday night?**

A. I was at Lehman, the building -- now the Barclays building.

**Q. 745 Seventh?**

A. The one that is now that ugly color of blue or green -- used to be green. Now it is blue.

**Q. What were you doing at that time?**

A. I was meeting with senior management of Lehman focused on what else was melting down outside of the Barclays transaction.

**Q. And what else was melting down?**

A. I mean, it was a very broad, long conversation. I produced my notes to you of that conversation, which only doesn't even do full justice, I guess, to all the details.

But Lehman is a, was a multinational investment bank, stopped cold turkey an arbitrary time and date. There was just a never ending number of issues and concerns and we wanted to know what was it that impacted creditors that we needed to jump on to immediately to preserve and protect value.

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recollection of things, but not notes like this, not coherent, but for instance, the balance sheet nits and jottles, but I --

MS. TAGGART: I don't want to misrepresent, there are -- and if it hasn't been there, it will be on a privilege log there have been some notes that have been withheld on the privilege grounds.

MR. STERN: From the 17th through the 27th?

MS. TAGGART: Maybe, I could check the dates if that's possible. It wasn't withheld because it was after that time. It was withheld because there was attorney/client communications.

A. I can help you go through and see what dates they were from.

**Q. The balance sheet that you are referring to, can you describe that to me?**

A. Can I ask someone to give it to you?

**Q. Sure, if you have it.**

A. Could someone give that exhibit that was handed out at the --

MS. TAGGART: It is Exhibit 19. I

BURIAN

don't think we have a copy of it, but that's what he is talking about.

**Q. OK. All right. Looking back at Exhibit 472-B, were these --**

A. Now these are my notes.

**Q. 472-B? These are your notes, this is your handwriting?**

A. Yes. My mother would be appalled, but yes.

**Q. I think we can make it out.**

**Did these notes reflect more than one meeting?**

A. These multiple pages?

**Q. Yes.**

A. Yes.

**Q. Can you take me through the notes and tell me which sections relate to different meetings if you can recall starting at the top?**

A. Sure, to the best of my knowledge, Thursday night the 18th, first page, second page, and probably, I can't be certain, but probably up to where it says A/R on the third page.

**Q. OK.**

BURIAN

A. No, including the A/R.

**Q. Including the A/R, OK, and then after the A/R, when would you have taken those notes?**

A. I believe this was early on Friday morning, the -- here is the issue. I don't remember if the balance of this page and the next page up to the line that goes like this -- with the camera, up to this line.

**Q. OK.**

A. I don't remember if that was one call or a quick call, hang up, and then a call back, you know, 20 minutes later. If I had to swear or guess, I think it was two, but it was such -- so close to each other, I don't know if it matters.

**Q. After that line with the diamond and the line through it on page 38190, the notes after that, when were those taken?**

A. I believe that that was -- I'm not sure, but I believe that that was a subsequent call later in the morning on Friday before the hearing.

**Q. The hearing was in the afternoon. Could these notes have been taken in the**

BURIAN

**afternoon?**

A. They were -- well, let me back up and make it easier for you. If you turn the page, these are my contemporaneous notes of what I was told, the transaction was going into the hearing on Friday. I remember being anxious and nervous that I got these and I had to figure out like -- I missed the beginning of the hearing and I had to get moving and also wanted to describe this to the committee before the hearing started.

**Q. You're talking about page 38191?**

A. The last page.

**Q. OK, fine.**

A. So if you work backwards, this was the final communication to me before the hearing and then the one -- so now backing up, I don't remember if this little bottom piece was part of that same conversation, but it got so confusing if I turn the page and said -- it would be like me, and what I think happened is I started taking notes at the bottom, trying to figure out how what they are now telling me comports with what they told me earlier in the day, and I said forget it, switch, just tell me what was, what

BURIAN

is, and let's ignore the previous two conversations that we had because if you are telling me those are all wrong anyway.

So let's get what was as of the hearing date on Wednesday and what is as of now that I am going to court. So my point is I don't remember exactly if these notes below that squiggly -- not the squiggly line, the arched line, were part of the previous conversation or part of the next one.

**Q. OK, fine. Let me just go through this with you and I'm going to skip through the first two pages and I'm going to start with the third page which is Bates number 38189. The bottom half of that page with the X through it, do you see that?**

A. Well, for the camera, the X and these lines.

**Q. Yes, and we have this as an exhibit, so we will be able to refer to it.**

A. OK.

**Q. The bottom half of the page, can you tell me what that says?**

A. You want me to read my handwriting?



BURIAN

Q. Yes. It looks like it says  
L-B/something?

A. S-B.

Q. S-B. What does the S-B relate to?  
What does that mean?

A. Long book/short book.

Q. And then what does it say?

A. 50.64 B, assets; 27.4 B agencies,  
equities, corporate.

Q. And then what does it say?

A. Collateralized repo of Barclays Fed  
loan.

Q. And then what does it say?

A. They took all the Fed securities,  
Corp. something or other, CDO, financing of -- I  
think it says Corp. loan sales, but I'm not  
sure.

MR. STERN: Do we have the original of  
these notes?

MR. WHITMER: It is going to take me a  
minute to make sure I don't have any  
anything privileged in them.

Q. What does the next line say?

A. The original is not going to help you.

BURIAN

It is my handwriting. Do you want me to keep on  
reading?

Q. You think it says Corp. loan sales,  
but you're not sure. CDO --

A. It says financing of, I think it says  
Corp. loan something.

Q. OK. And then the next line, what does  
that say it? It looks like there is a number?

A. 5 billion.

Q. What does that relate to?

A. I don't know. I mean --

Q. Next line.

A. Total extension, 45.5 billion.

Q. Below that?

A. Cure payments, 250, underneath an  
arrow that says 250, good will payment, and then  
another below that, an arrow that says, comp and  
severance.

Q. Hold on for a second. We need to give  
her a break.

So below comp and severance, what does  
it say?

A. I think it says 1.02 and then it says  
New Jersey appraisals, 110 million shy.

BURIAN

Q. OK, and then next line?

A. Repo 50.6, here it says million.

Q. It says MM?

A. MM.

Q. And then below that?

A. No upside in the portfolio.

Q. And to the bottom left, it says 5  
p.m.?

A. Correct.

Q. What is that a reference to?

A. I honestly don't know.

Q. And going back to the 5 billion dollar  
figure in the middle of your notes, did you tell  
me that you don't recall what that represents?

A. We have to --

MS. TAGGART: Wait, hold on, let me  
just read that. I was dealing with  
originals.

OK, go ahead.

A. You need to be more clear about the  
question, about what I thought it represented.

Q. Well, let's do it both ways. I think  
you read your notes under -- it says they took  
all the Fed securities and under that, there is

BURIAN

a figure with a dollar sign, 5B. Do you see  
that?

A. Yup.

Q. Do you know or do you remember what  
that is a reference to?

A. No. Because -- no.

MS. TAGGART: For the record, we have  
the original of that page. Well --

Q. Do you know with whom you were  
speaking when you took those notes?

A. Yeah. I also want to explain the  
cross-out. Jim Seery and Mark Shapiro, one or  
both of them were on the phone for all three of  
these pages. That's where the information came  
from on all three of these pages and --

Q. In the last page --

MS. TAGGART: Let him finish.

A. -- and the 5 billion I think it was  
the netting of the 50 billion to get to 45  
billion, 45.5. Although I honestly don't  
remember how that correlates to 27.4 on the  
right side.

Q. Why do you think the 5 billion was  
netting of the 50 billion to get to 45.5?

**BURIAN**

1 A. I don't know if I can -- I am happy to  
2 explain to you the -- they were on the phone  
3 rattling this off. I didn't get a chance to ask  
4 them questions. And then as soon as they were  
5 done, like there was like a lot of noise in the  
6 background, like whispering or shuffling and  
7 talking, and then they came back on the phone  
8 and said something to the effect of, oh, my,  
9 although the language was more investment  
10 banking then oh, my. That's all wrong, scratch  
11 that and forget it.

12 I told you before I don't remember if  
13 they said scratch that, forget it. I turned  
14 the page and then was told the top of the  
15 next page or if they hung up on me and then  
16 came back shortly thereafter and gave me the  
17 information on the top of the page. So this  
18 was OK, Saul, here is what's going on, 50.64,  
19 we got 25, 4 -- --collateralized, running  
20 through the issues, and then oh, mumble,  
21 mumble, mumble, noise, noise, noise, forget  
22 that, scratch it. Let me tell you what's  
23 really going on.

24 I believe they hung up on me -- not  
25

**BURIAN**

1 hung up on me being nasty, I have got to go.  
2 There was a lot of noise in the background  
3 and bedlam and they were preparing for the  
4 hearing and yada, yada, yada, but it wasn't a  
5 two-way conversation where I could say, what  
6 is that 5 billion, what is that, what is the  
7 127.4.

8 It was write down what someone was  
9 very very, very quickly, next page -- two  
10 pages over is much more of me participating  
11 in the conversation and saying, whoa, whoa,  
12 whoa, not that page, next page, of me saying  
13 I want to understand it better, I need to get  
14 this right, and you need to explain this to  
15 me.

16 That's why I don't want to sound like  
17 an idiot, someone says what did you write  
18 down, what's your recollection. I was really  
19 trying to write down as fast as I could what  
20 someone was throwing at me and then they hung  
21 up or said scratch it and move on. So if you  
22 look at the next page, what they said to me  
23 was -- I am sorry I don't know if there is a  
24 question.  
25

**BURIAN**

1 **Q. What was the question?**

2 A. What is --

3 **Q. Let's hear the question because we are**  
4 **going to be here late in the evening if you**  
5 **don't answer the question.**

6 (Record read as follows:)

7 **"Q: Why do you think the 5 billion**  
8 **was netting of the 50 billion to get to**  
9 **45.5?"**

10 A. I don't have -- I do not have a  
11 specific recollection of what that number was.

12 MR. STERN: Can you in the record  
13 reflect the question again.

14 **Q. You believe at some point in this**  
15 **conversation with Jim Seery and possibly Mark**  
16 **Shapiro, that they ended the conversation?**

17 A. Correct.

18 **Q. And then did they call you back or did**  
19 **you call them back?**

20 A. As I said earlier, I don't remember if  
21 I was on hold for a period of time and there was  
22 a conversation that continued or they hung up  
23 and one of us called each other back.

24 My impression was they were running  
25

**BURIAN**

1 from room to room or, I don't know if they  
2 were Lehman or Weil, so it was hard to reach  
3 them. So I -- subject to the fact that I am  
4 not 100 percent sure if there was one long  
5 conversation or a separate one, I think that  
6 they called me back. I'm not 100 percent  
7 sure.

8 **Q. On this sheet that's bearing Bates**  
9 **number 38189, do you recall when you crossed out**  
10 **the information at the bottom half of the page?**

11 A. During the conversation -- at the end,  
12 when they said scratch that, forget it, ignore  
13 that, that is all wrong, I crossed it out and  
14 turned the page.

15 **Q. When -- and you have specific**  
16 **recollection that they said that is all wrong?**

17 MS. TAGGART: Object to form,  
18 argumentative.

19 A. Absolutely -- I am sorry, absolutely.

20 **Q. Who said that?**

21 A. I believe it was Seery, but it could  
22 have been Mark Shapiro.

23 **Q. Do you recall whether both of them**  
24 **were on that call?**  
25

BURIAN

A. I do not recall if both were on the call.

Q. OK. Do you recall whether they said that all of this information that you crossed out was wrong or some parts of it were wrong?

A. It wasn't that specific. It was let's start all over, let's not be confused, that's wrong, that's wrong, let me tell you what the deal was. As you --

Q. So then you --

MS. TAGGART: Wait, he is finishing.

A. As you can see in the context of the conversation, they came back, I was still confused, and then we had the last conversation before the hearing. So this was iterative.

Q. You say as you can see, but I can't necessarily see that. I am really relying on your testimony and your recollection. Because I don't think it is obvious from what's on the page.

A. Well, what's on the --

MS. TAGGART: What's the question?

Q. Let's turn to the next page --

A. Can I just be clear because I think

BURIAN

the question was when did I --

MR. STERN: Is something the matter?

MS. TAGGART: You were making a speech about your comment on his testimony.

MR. STERN: I wasn't making a speech, certainly not compared to your speech making today.

MS. TAGGART: Are you going to let me to answer you questions now? Would you like to know what's the matter.

MR. STERN: I have given you plenty of time to make speeches. Let's ask the next question.

MS. TAGGART: You ask questions and he will give you the answer.

A. I am answering your question.

Q. You have to answer questions, OK? It is not an opportunity just to speak?

MS. TAGGART: Let's get on with a question, not a little talk about this.

Q. Looking at the next page, 38190, what does that information reflect?

A. The top half above the curved line, as I previously testified, represents a telephone

BURIAN

conversation with Lehman representatives that followed them telling me to ignore the previous information.

Q. OK. So above the curved line is a conversation with whom?

A. I believe it was Jim Seery and Mark Shapiro or just Mark Shapiro.

Q. And read to me these notes, so that we know what they say.

A. 45.5 -- dollar line sign, 45.5 long, all shorts closed out, I wrote in paren, maybe some. And then I crossed out at that time, the maybe some.

Loan is at 45.5, real estate, real estate, RE --- losing 100 MM. Comp and severance losing the upside in the portfolio, no cash. 350 PIM broker, I can't read what the next two items are with the numbers. I know what they represent, but I'll stick to answering the question and reading it to you. So I can't read it, it was P, and then something and then 220 and then 300. Then something else, 110 and then 1150. And they have totalling of those columns which have

BURIAN

the 330 to 450.

Then 20-30-B closed out, space, crossed out and beneath that is a line, repo-but nothing after the dash, and then below that, I believe that scrawl is agencies-1 to 2. I think it may say pass through, but I'm not sure what that says, 3 to 5 percent, Corp., 5 to 10 percent, ill-liquid, empty, nothing there, space.

Should I stop at the line?

Q. Is that when the conversation ended?

A. As I said to you earlier, I wasn't sure if below the line was that conversation or the beginning of the next conversation when I continued to be confused and insisted on not relating back to things, but starting all over Wednesday to Friday as opposed to interim conversations that I was told don't -- that's why I was not sure.

Q. What would help me to understand --

MS. TAGGART: I have the originals and I will note there is a change in pen color, so if you want to refer to that, there is the original page.

BURIAN

**Q. On page 3841 --**

A. Am I allowed to see that, too?

MS. TAGGART: Sure this is the next page, but the back of it has some privilege, so please don't look under that.

**Q. This is a separate pen. OK.**

**So just --**

A. Were you asking me if that's a separate pad?

**Q. It is a different -- on page 38191, it appears from the original that that's written in a different pen.**

A. Different pen, it is the same pad.

**Q. I said pen.**

A. Oh, yeah, OK. I thought you said pad, P-A-D.

**Q. So does that refresh your recollection, looking at the original, that the last page of this exhibit 38190 -- I am sorry, 38191 was written at a different time than most of the blue notes on 38190?**

A. It doesn't refresh my recollection. It is what I said now at least three times, which is the last page of these notes was from

BURIAN

that last conversation before the hearing. My only ambiguity was on the previous page which is page -- where is the squiggly line page? Here, it ended 190 and now looking at this, I notice that the numbers on the right side, 47.4, 45.5, 2 cure, two employees is in a different color pen, and that's consistent with what I said before, that some portion of this page may have been the beginning of the next conversation and not only, you know, part of that conversation.

**Q. And when did the next conversation take place, the conversation that's reflected on 38191?**

A. That was -- well, I have a firm recollection that this conversation ended with Saul, I got to go to the hearing.

**Q. Who said that?**

A. Probably I think Mark Shapiro; I got to go. So this was whatever period of time that the people with Mark felt he had to get there in time for. So back it up from when the hearing started to when someone would have thought travel was necessary, the hearing was 2 o'clock. Probably 1, 1:30.

BURIAN

**Q. So you believe this last page reflects notes of a conversation with Mark Shapiro?**

A. I don't remember if Jim Seery was on that call or not and who else was on the call, but definitely I believe Mark was on this call.

**Q. So this -- OK. So this last page is the 19th which is a Friday?**

A. Correct.

**Q. And --**

A. Well, the other page is also the 19th.

**Q. And the previous two pages were early Friday, I think you said the very beginning of the notes started on the 18th?**

A. The top, I don't know the squiggles of 189, where it says 4.6, 9, 3-6, 1.5, 2. I don't know when that was from. But above that, up to the A/R that we drew a line by A/R, that was from the night before.

**Q. Now, looking at the top of page 38190, where it says 45.5 long, all shorts closed out, loan is at 45.5?**

A. Um-hm.

**Q. What did you understand all that to mean?**

BURIAN

A. It was exactly what I told you earlier, that it was no haircut, it was a direct even-for-even match.

**Q. So your recollection is that you were told by Jim Seery and/or Mark Shapiro that there was no haircut in the repo?**

A. The word "haircut" never came up in the conversation. So the answer is no to that question.

**Q. So they never told you there was no haircut?**

A. They told me that we had a 45.5 asset position against a loan of 45.5. I then deducted 45.5 from 45.5 and determined that there was nothing, no value in excess of the loan on my own without being told that.

**Q. And you're sure as you sit here today that that is what they told you concerning the terms of the repo?**

MS. TAGGART: Objection to form.

MS. SCHAFFER: Objection to form.

MS. TAGGART: Asked and answered.

A. The terms of the repo never came up in the conversation.



BURIAN

**Q. What was this a reference to?**

A. I was told that it was 45.5 billion dollars of assets going to Barclays against a 45.5 billion dollar loan from Barclays. The mechanics of Fed portfolio securities, cash, noncash, all that stuff in these quick conversations was irrelevant. We were just focusing on the substance of what was moving to whom.

**Q. You say there was no discussion of there being a repo?**

A. This was described as, right, the loan was described as Barclays' loan to us which at the time we thought it was a simple transaction at Barclays stepping into the full amount that the Fed was owed. The -- there was no discussion on the mechanics of that step in.

**Q. So in other words, this discussion at the top of 38190, you did understand to relate to the repo?**

A. Getting back to what I said was -- I didn't give it a second thought of whether it related or didn't. I can't tell you if I knew then what I know now about the clarification

BURIAN

letter and the mechanic for execution. The conversation was quick. It was short. It was pressured and it was about, hey, just tell me the substance of what is happening, what are we giving, what are we getting. I don't have -- we didn't talk about haircuts or mechanics.

**Q. Did you have an opportunity to ask them what the basis was for the 45.5 long figure at the top of page 38190?**

MS. TAGGART: Object to form.

A. I did later in the next page in that conversation. But at this conversation, I merely wrote down what they told me.

**Q. What did they tell you was the basis for the 45.5 long?**

A. I don't remember specifically if they said the basis for the 45.5 is, but all the conversations, these were -- I thought they were the Lehman marks.

**Q. OK.**

A. And --

**Q. Did you have a chance to find out from them how that 45.5 long on page 28190 related, if it did, to the 50.64 billion dollar figure on**

BURIAN

**page 38189?**

A. I was told that that number -- that that whole thing was wrong or misunderstanding of the transaction, I should rely on these numbers, and then of course, they call back and said this is what you should rely on.

**Q. I don't think that answers my question.**

A. We didn't go back and forth comparing this to the conversation they told me to ignore.

**Q. Let me ask you my question again. Did you have a chance to ask or did you ever find out whether there was any relationship between the 45.5 long at the top of page 38190 and the 50.64 at the middle of page 28189?**

MS. TAGGART: Objection, asked and answered.

A. Only in the context of the conversations that revolved around -- that ended in my notes on page 191.

**Q. And what did you find out about the relationship between those two figures?**

A. That they were wrong.

**Q. Both figures were wrong?**

BURIAN

A. No, that the 45.5 was right, but did not represent a par value. It represented a mark value.

**Q. What did you -- what were you told the 45.5 represented?**

A. Let's back up to when?

**Q. During this conversation?**

A. On page 190?

**Q. Yes.**

A. That these were the value of the long position being transferred to Barclays.

**Q. And do you know, did they tell you who arrived at that value?**

A. I don't remember a specific conversation about who marked the book, but the understanding of the conversation was we were talking a common language and that these were the Lehman marks.

**Q. Did they explain to you what the figure 50.64B on page 38189 represented?**

A. I am sorry?

**Q. Did they explain to you what the 50.64 billion figure on page 38189 represented?**

A. In the subsequent conversations?

BURIAN

**Q. In any conversation.**

A. Well, as I said to you before, in that very quick conversation, they said, OK, here's numbers, he rattled down, we got 50.64 billion of assets with 27.4 billion representing these things and he ran through the numbers, I took notes as quickly as I could, and then he told me scratch that, it is all wrong, I'll get back to you. Or I was on hold for a while. I don't remember if it was the same conversation or separate.

In the subsequent conversation, we did not go back to that, and as I said earlier, because we were so confused about what we are going back to and what we are not going back to, we decided to scrap all the conversations and start all over on 191, just tell me what the deal is.

**Q. That doesn't answer my question.**

A. I tried.

**Q. My question is very narrow. Did Mr. Seery or Mr. Shapiro, whoever else was in this conversation with you, explain to you the basis of the 50.64 billion dollar figure at the**

BURIAN

**middle of page 38189?**

A. No.

MS. TAGGART: Is this a good time for a break?

MR. STERN: You need a break? OK.

THE VIDEOGRAPHER: The time is now 3:49 p.m., we are now off the record.

(Recess)

THE VIDEOGRAPHER: This is the start of tape number 5. The time is 4:01 p.m., we are now back on the record.

**Q. Let me hand you an exhibit previously marked as Exhibit 338-B. And we have the original of this. Could you for the record just describe the original to us?**

A. Can I hold it up to the camera? Does that help?

**Q. Sure.**

A. It's a -- a manila folder with -- the back of the manila folder has two different handwritings on it. The predominant one is blue and that's a felt-like pen or Roller Ball, and then a more cheaper pen, there is a different shade of blue or black that's on the center.

BURIAN

**Q. And the different shade says the word "RESIs" and there are two numbers 2.5 and 3.5 below it.**

A. Correct.

**Q. Can you tell us what this is?**

A. This is an exhibit, this is a document -- how is that for a neutral phrase? -- that was given to me by Michael Klein early the morning of the 22nd of September.

**Q. Are the notations on this document notations that were made during the course of the meeting that you had?**

A. Yes.

**Q. And tell me who was in the meeting?**

A. From Houlihan, it was me and Mike Fazio. I believe Lori Fife was in for the part or all of the meeting but certainly Harvey Miller was there for the whole meeting. I think Tom Roberts. Maybe Krasnow, I don't remember.

MS. TAGGART: Off the record for just a moment.

THE VIDEOGRAPHER: Off the record.

(Recess)

(Exhibit 473-B, document Bates stamped

BURIAN

LBHI 4414 through 4415 marked for identification, as of this date.)

(Exhibit 474-B, document Bates stamped MTHM 5778 marked for identification, as of this date.)

THE VIDEOGRAPHER: The time is 4:07 p.m., we went off the record at 4:04 p.m.

**Q. When we went off the record, we were looking at 338-B and I asked you who was in the meeting and you told me from Houlihan, it was you and Mike Fazio, Lori Fife for part of the meeting, certainly Harvey Miller was there for the whole meeting, you said you thought Tom Roberts, maybe Krasnow, you didn't remember. Anybody else?**

A. Well, Richard Klein from --

**Q. Michael Klein?**

A. Michael Klein, the Barclays representative.

**Q. And where did the meeting take place?**

A. One of the smaller conference rooms on the 25th floor of Weil.

**Q. At what point in the meeting did Mr. Klein write on the Manila folder that we**

**BURIAN**

**have marked as Exhibit 338-B?**

A. Very, very early. It was -- when we say meeting --

**Q. Conversation.**

A. It was very early. I mean, that's what this was about.

**Q. And describe to me how the conversation went.**

A. To do that accurately, I need to give you the five seconds before the conversation started, because there was a --

**Q. Sure.**

A. So pressure is building throughout the night and it is now morning. We are hearing things about the clarification letter, things changing. My guys are telling me that there is this list of assets that doesn't match what we have been told was going to be the deal and the court, we are getting anxious and upset and finally I turned to Harvey and said, we are tired and we are being ignored and we are not doing anything or something to that effect, we need to know what is going on, what is the deal, do we have a problem, is there a problem.

**BURIAN**

And he was like, well, I don't know, negotiations, yada, yada, yada. And I say, Harvey, we can't delay anymore. We need to know. He turned, like said, wait there a second, and he basically grabbed Michael and I wasn't part of the conversation, but the implication from the body language was I know you're busy, there was a separate room where Archie Cox was, a lot of other important people, and my impression, he said this is something that you have to make time for and I won't say in an exasperated way, because he is very polite, but in a time-sensitive way, he came into the room and it wasn't like, hey, wait for me, I am going to bring other people. It was like now is your opportunity to get information.

So Mike and I sat down and he came in and I think Harvey may have said a preamble or something like, hey, you tell us what the deal is. I believe he said us, including him, he may have meant me, but he said, I think he said us, I think he wanted to hear it himself, and then Mike launched into what purported to be the final negotiated deals,

**BURIAN**

now 1:30 to 2:30 in the morning, and he, you know, there has been a lot of confusion and he said this is what happened and this is what's going on, and this is why you should be comfortable. And he -- all the markings on that page are his markings. Other than me writing the other print, the RESIs 2.5, 3.5.

**Q. I see. That's your handwriting.**

A. That's my handwriting.

**Q. And what was your basis for making that notation?**

A. It was after the conversation -- it was after he finished and he handed me the folder and then I asked him how does -- he didn't understand the context of the whole conversation, like we were doing the back first I asked him how does that split, 50/50 or RESIs at 2 and a half, 3 and a half, all the numbers we have been reading, and as my wont, I doodled "RESIs 2 and a half, 3 and a half." And he --

**Q. What did you understand that to represent?**

A. My doodle?

**Q. Yes.**

**BURIAN**

A. That I had said 2 and a half, 3 and a half, I wanted to understand how that correlated to which assets were going or not going. And then I doodled -- I guess I figured it would be somewhere in this quadrant that those would belong in one of the boxes, but I --

**Q. You were not sure?**

A. No, I was sure what my question was, explain to me in this morass why the deal was 50/50, why it was we had upside in some of these things, how come originally in court it was going to the DTC, and I think 2 and a half or 3 and a half was going to stay or go, those details are fuzzy now in your whole explanation of what the deal is, where do the RESIs fit in. That is what I was saying when I doodled that on the manila folder.

**Q. Did you understand that Barclays was receiving certain of the RESIs through the repo replacement?**

A. I had no idea if it was through or not through. I did know that the new deal included some RESIs. I asked how those RESIs compared to other RESIs, because there were three sets of

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<p>1 BURIAN</p> <p>2 RESIs. It was -- at different times, there was</p> <p>3 confusion in my mind of RESIs that were not</p> <p>4 going to Barclays, RESIs that were going</p> <p>5 Barclays, RESIs staying at DTC, RESIs that were</p> <p>6 being split, and until today, I have never</p> <p>7 gotten an explanation.</p> <p>8 <b>Q. Did you know whether there are certain</b></p> <p>9 <b>RESIs that would be seized by JP Morgan?</b></p> <p>10 A. That would be subsequently seized?</p> <p>11 <b>Q. Or had been?</b></p> <p>12 MS. TAGGART: Object to form,</p> <p>13 foundation.</p> <p>14 A. I am sorry, what's the question?</p> <p>15 <b>Q. Did you know whether there were</b></p> <p>16 <b>certain RESIs that either had been or would be</b></p> <p>17 <b>seized by JP Morgan?</b></p> <p>18 MS. TAGGART: Object to form,</p> <p>19 foundation.</p> <p>20 A. Not with particularity. I knew</p> <p>21 leading up to this meeting Wednesday -- sorry,</p> <p>22 Thursday and Friday hearing about how assets</p> <p>23 weren't coming back and Saturday and Sunday were</p> <p>24 endless meetings and wranglings, the deal is go</p> <p>25 to blow up, JP Morgan won't cooperate, can't the</p>	<p>1 BURIAN</p> <p>2 Fed do something, all that stuff. About</p> <p>3 transfers from JP Morgan, I do not remember</p> <p>4 whether the word "RESIs" were particularly</p> <p>5 referenced in that connection.</p> <p>6 <b>Q. So going back to the manila folder,</b></p> <p>7 <b>upper left quadrant, there is a notation 49.9</b></p> <p>8 <b>that's circled.</b></p> <p>9 A. The upper left is 72.68.</p> <p>10 <b>Q. I am focusing on 49.9 and next to</b></p> <p>11 <b>that, it says, "Premarked." What did you</b></p> <p>12 <b>understand that 49.9 figure to be?</b></p> <p>13 A. I have a very clear recollection.</p> <p>14 The -- what was going on was we were trying to</p> <p>15 understand what the deal was and when Mike told</p> <p>16 us, Mr. Klein told us was, yes, you're right,</p> <p>17 you have seen reports and you have seen numbers</p> <p>18 that's close to 50 million dollars, and you've</p> <p>19 seen -- and that basically we are getting -- we,</p> <p>20 Barclays is getting -- I'm not sure 44.4 or 44.9</p> <p>21 now that I am looking at it carefully, but we</p> <p>22 are getting roughly 50 billion of assets with a</p> <p>23 premark value --</p> <p>24 <b>Q. Excuse me for a second. Are you</b></p> <p>25 <b>saying you don't know whether this number that's</b></p>
Page 252	Page 253
<p>1 BURIAN</p> <p>2 <b>circled --</b></p> <p>3 MS. TAGGART: No, no, he gets to do</p> <p>4 the whole answer and then you can have a</p> <p>5 clarification. But --</p> <p>6 <b>Q. You mentioned 44.4 or 44.9.</b></p> <p>7 MR. STERN: Please, Erica.</p> <p>8 MS. TAGGART: No, he gets to finish --</p> <p>9 you have got a transcript. You can ask</p> <p>10 things, but he gets to answer.</p> <p>11 <b>Q. Are you saying that figure is 49.9 or</b></p> <p>12 <b>44 --</b></p> <p>13 MS. TAGGART: No, no --</p> <p>14 MR. STERN: Please, would you stop?</p> <p>15 MS. TAGGART: No, you interrupted. He</p> <p>16 has to put his answer on the record and then</p> <p>17 you can clarify anything that you want.</p> <p>18 Why don't you go back to what you were</p> <p>19 answering, and then you can ask the</p> <p>20 clarification. We have the whole transcript</p> <p>21 you can go back to any part to get</p> <p>22 clarification.</p> <p>23 Why don't you keep going.</p> <p>24 A. I must admit, Erica, I am a little</p> <p>25 lost.</p>	<p>1 BURIAN</p> <p>2 <b>Q. I think that's because your counsel is</b></p> <p>3 <b>interrupting. Let me ask a question.?</b></p> <p>4 MS. TAGGART: Wait, wait, wait.</p> <p>5 MR. STERN: We are going to be here</p> <p>6 very late tonight.</p> <p>7 MS. TAGGART: No, we are going to stop</p> <p>8 it at 7.</p> <p>9 MR. STERN: No, we are not.</p> <p>10 MS. TAGGART: Do you have any more to</p> <p>11 add to your answer. Is there any more that</p> <p>12 you want to add to your answer? It is OK,</p> <p>13 if you don't know and we can do a new</p> <p>14 question and new answer.</p> <p>15 A. I was explaining the 49.49 premarked</p> <p>16 number that's circled on the page, and then I</p> <p>17 said, wow, look, the jiggle is not closed. But</p> <p>18 there is no question in my mind that that was,</p> <p>19 at the time, it was 49.9 billion and that the</p> <p>20 intention was that he was saying to me you're</p> <p>21 right, you showed me an exhibit earlier, you're</p> <p>22 right that your concern was that roughly 50</p> <p>23 billion of securities, which matches up to</p> <p>24 Exhibit 461-B, at the time I didn't have this.</p> <p>25 <b>Q. You did not have 461-B?</b></p>



**BURIAN**

A. Not in my hands, and as I said earlier, I knew that there was confusion and we were concerned about what securities were going and what appeared to be a difference in the valuation, in the value of what Barclays was getting, and that, you know, was there a 45.5 billion in liabilities against 50 billion of assets, and therefore, what he said to me was, hey, 49.9 that you have been looking at is premark. That's stuff that relates to not today's value, that's premark.

We asked at one point premarked as of when and he says, listen, it doesn't matter if it is, you know, what the date and when, but I am telling you, when we came in this meeting today and we are trying to close the transaction, 49.9 is the old value of what it was we are getting.

And then he said, post mark, which means, which was we have lost 4 to 5 billion dollars over the last period of time. Markets have been, a lot of ill-liquids. We said what time period did it happen. Saturday. You know, it was like listen, you

**BURIAN**

want an explanation of the deal, here is the deal. 50 billion of assets, they have dropped in value, and they are now -- we agree with Lehman that these assets are worth 44 to 45, and therefore, you know, we were short. We are adding 1.9 billion of assets that are unencumbered that were not part of the repo to get to a total of what Barclays is getting of 47.

And that is my absolute understanding of the left, top left quadrant of the page and that 47 is tied to -- is the final number as compared to the 72 which is where what he said was the original contemplation when the document was originally signed.

**Q. I think you said that you personally did not have the information contained in 461-B at the time of this conversation with Mr. Klein and Mr. Miller. Is that right?**

A. That is correct.

**Q. But your team -- the Houlihan team, that is -- did have the information reflected in Exhibit 461, is that right?**

A. That is correct.

**BURIAN**

**Q. Did anybody from your team bring to your attention the information in 461-B that is summarized right under tab A?**

A. Yes.

**Q. Who did that?**

A. It came up a number of times. The most obvious one is Mike Fazio who goaded me or convinced me I need to be much more firm to get an explanation of what was going on, following his conversations with Seery where we were told those numbers are no longer relevant and that both the corpus of what was being transferred may not be accurate and the value of what was being transferred has degraded.

And therefore, that was in my mind when I said in an aggressive manner, we need to understand what is going on and, frankly, that is also why when Michael Klein, not Fazio, explained this to me, I was relieved. Because it footed in a positive way, it footed in a benign explanation to what it is that I had been hearing from my team and things were OK, as opposed to nefarious.

**Q. Did you believe at the time that there**

**BURIAN**

was a certain valuation, in other words, a valuation with certainty of the repo collateral that Barclays had received?

MS. TAGGART: Object to form.

A. When Michael said to me, Mr. Klein said it was between 44 and 45, so obviously that's a range.

**Q. It's a range. Did you know whether that was a figure that reflected a valuation by Barclays?**

A. It was -- is there a rest of the question?

**Q. No, that was the question. Did you know whether that was a range that reflected a valuation by Barclays?**

A. Michael told me that there was deterioration in value from the premark. I know that we were discussing all day long, they appeared to be discussing all day long what securities were there and what the values were. The implication was that for the purposes of closing the transaction, they agreed that the securities were worth 44 to 45.

**Q. Did that reflect a formal valuation or**

BURIAN

an agreement?

MS. TAGGART: Object to form.

A. I -- the Lehman books were either ill-liquids and other things, the marking process at Lehman was complicated. It wasn't a formal valuation in my understanding. So I can't tell you -- the distinction between a valuation and an agreement is short of vague because of the way in which Lehman marked their books. My understanding, this was a good faith number agreed upon by the parties as to the value of the securities, actually tangible value.

Q. Did you understand it to be an estimated value?

A. There is a range, 44 to 45. So it has got to be an estimate, right?

Q. Further down on the folder, there is a line that says, "Timing of 49.9." Do you see that?

A. I do.

Q. Could you explain to me the notes that appear below that?

A. Do you want me to read them to you?

BURIAN

Q. Read them and then tell me what you understood them to mean.

A. Well, we only did the top left quadrant, not the top right. But first they described to me what the economic substance of the transaction is and then below the line, I said OK, now all the nonsense, the last two days, let's talk about what the problems have been and how we are actually going to effectuate the transaction described above and, therefore, timing of 49.9 is shorthand for how the premark securities were going to move. And to make things simple, I thought that all these numbers -- well, since -- it says 41 to 42 of it was transferred to Barcap from JPM. I think that was as of Friday, but -- it says Friday, as of Friday. But 8.55 was held up.

As you know from my affidavit, I have questions about that 8.55 number. Then there is an arrow there that says somehow or another decided that in lieu of 8.55, that is not -- that didn't make it across, that a substitute 7.4 of cash for that 8.55. So on a premark basis, what he was telling me is

BURIAN

you're getting, we are taking 48.4 to 50.4 of premark value and that's how this stuff spread across.

Q. Now, these part of the notes, did Mr. Klein provide this information on his own or did Mr. Miller, Harvey Miller provide some of the information that Michael Klein wrote down?

A. Mr. Miller didn't say a word. This is all Michael Klein explaining this to me in a charged environment to explain that there was nothing nefarious going on.

Q. So Harvey Miller, nobody else in the meeting said anything relating to the 8.55 or the 7.4?

A. Certainly not at the beginning when this was being written. This is Michael telling us what the day's resolution was, Michael Klein, I am sorry, I will say Mr. Klein. Whether there was a subsequent conversation, I don't remember.

Q. Did anyone in that conversation reference a box loan that JP Morgan had made to Lehman?

A. Not in this conversation.

Q. Now, I think you said that Mike Fazio

BURIAN

had reviewed 461-B?

A. What I said to you is Mike Livanos reviewed it. I can't tell you how much time Fazio did or did not. He certainly saw the summary of the front page.

Q. OK. You think that Mike Fazio saw the summary?

A. Definitely saw the summary.

Q. OK, and the summary refers to a cash line of 7 billion. Do you see that?

A. I do.

Q. In this meeting with Mr. Klein, did Michael Fazio ask any questions about the relationship between the 7.4 and the 7 billion that is listed on Exhibit 461-B?

A. Nope.

Q. Did Mr. Fazio, during this conversation, ask any questions about the relationship between the total figure, the 49.9 billion in Exhibit 461-B and the 49.9 figure that appears on Exhibit 338-B?

A. No.

Q. How long was the conversation in which Mr. Klein wrote these notes?

BURIAN

A. Ten to 20 minutes, 10 to 15 minutes.

Q. And then how did the conversation end?

A. Well, I started to ask a question about the RESIs and didn't get an answer. There was agitation that Michael Klein was needed elsewhere. Mike Fazio tried to have the conversation about mark, when, post mark, how, as of what date. We didn't make specific reference to this, but the idea was --

Q. This being 461-B?

A. Yeah, yeah. I mean, I frankly -- and maybe I was naive -- I took comfort in the fact that the number footed because it showed that this -- what Michael Klein said to me was consistent with what I was told by my guys, which is, hey, there is a list of securities that purport to be part of the transfer. It is close to 50 billion dollars. Hey, what's up, when the Barclays loan is 45.5, and here I had a, not only a plausible but consistent explanation of the mismatch, that there was some significant deterioration in value in the interim. Mike wanted to ask about that and that was cut off or not included and then I know I

BURIAN

turned to Harvey and said Harvey, are you comfortable with this, is this what's going on, and he said, yeah, or something to that effect. You know, and then the conversation clearly ended with us saying, gentlemen, or something like that, if this is what's going on, this is an explanation, I got it, I understand it, you know, I can't diligence this, I have to trust you and what you're telling me is going on.

But this is going on, it sounds like there is a mess up with JP Morgan and the values have dropped in value. You know, we don't understand why those values would have dropped, but if that's where Lehman and you guys are and the values dropped, we will get a reconciliation and it is what it is.

Q. There is a reference here to add box 1.9. What is that a reference to?

A. Again, we do need for completion -- because I don't think -- this part of the story you're not hearing, talk about the top right corner which you --

Q. I am asking about the add box, 1.9, that's my question?

BURIAN

A. The add box, that was basically Michael Klein telling me in order to match up with the right side of the page, Barclays needed to be paid additional securities to balance the transaction. And therefore, we had to give him that -- they had to find securities that were not originally part of the Fed loan in order to make up for the liabilities being assumed and the deterioration in value.

Q. Now, this meeting or this conversation was not the first time you had heard of that asset category?

A. Of the 1.9 asset category?

Q. Yeah.

A. Oh, again, there was lack of precision about numbers have been flying around, but before this, I saw a clarification letter that talked about assets on a B list or something.

Q. Do you recall any discussion before the approval hearing concerning the clearance box assets being estimated by Lehman to be worth 1.9 billion?

A. I think my notes have a reference to -- the night, right before the hearing in the

BURIAN

final summary of the hearing -- I am trying to remember when I first heard about this.

But I do know that some point, whether it was Friday before the hearing or it was Saturday night or Sunday, that they were looking for additional assets to make up for the deterioration in value or the stuff that JP Morgan took or that didn't show up, you know, when they were trying to do the repo.

Q. You don't recall whether you were told that before the hearing?

A. It is sort of like the name of the analyst.

Q. You don't remember?

A. I'm a little nervous to say yes because I don't have a specific recollection.

Q. Then that's fine.

Now, you wanted to tell me about the upper right-hand corner of this chart, Exhibit 338-B? Did you want to tell me about that?

A. I wanted to give you the context for understanding how the 1.9 was used to foot to the 47. That's the reason for that.

BURIAN

Q. OK, was there anything else you thought I should know about Exhibit 338-B?

MS. TAGGART: Objection to form.

A. Yeah, yeah, I think the most important part of the whole conversation was the right side of the balance sheet, not the left, and that is Michael Klein said, hey, we are owed 45 and a half billion dollars, as you know, Saul, the extra liabilities we are assuming on the cures and employee severance is 4 and a quarter. Even after taking the 1.9 billion of additional securities, we are short, and this is about as close to a quote as I can tell you, is you made 2 billion dollars this weekend. If anything, you should be happy.

Q. Now, the 4.25 billion, what did you understand that to be comprised of?

A. There was, in some notes it is 4 billion, some it is 4.25, but that was described as Barclays -- Barclays was supposed to -- whether they did or not, we can talk about if you want, but at this time, my understanding was Barclays was going to be responsible for paying all the accrued compensation and severance

BURIAN

liabilities of the 10 to 12,000 Lehman employees that were supposed to -- that were going to go over to Barclays and -- and that included the severance for people who declined to go to Barclays and the accrued comp for those who went to Barclays and the other portion of this was someone's estimate of what the cure costs were for those contracts necessary to deliver the franchise to Barclays.

Q. OK. On the comp portion of what you just discussed, what did you understand the estimate of Barclays' potential exposure to be?

A. I only understood what people told me and I can go look at the balance sheet that's Exhibit 19, if it was 2 or 225, one of them had a 25 at the end. Whether it was the cure or the severance, but so someone -- I was told that that number was either 2 billion or 2.25 billion, was the assumed liabilities in respect of employees.

Q. You had the APA though, didn't you?

A. Sure.

Q. And you -- did you read the APA on, provisions on compensation and severance for

BURIAN

transferred employees?

A. I did.

Q. And from that, did you understand what Barclays' potential exposure was?

A. No.

Q. Nobody gave you an estimate?

A. I just told you what the estimate was and then you asked me if I got it from the APA. The APA has words, it says I am picking up liabilities. I got the estimate from Weil and Lehman and at the court hearings. I didn't get that from the APA. I don't believe the APA has a number.

Q. But you had access to the APA?

A. I had more than access to the APA. I had a copy of the APA.

Q. And with respect to cure payments, did you understand that under Section 2.5 of the APA, Barclays had discretion concerning which contracts it would and would not assume?

MS. TAGGART: Objection, form, calls for a legal conclusion. The document speaks for itself.

A. I understood that Barclays had the

BURIAN

right to cherry-pick those contracts necessary for the operation of the Business, capital B.

My comment earlier was not about cure, it was about the severance and accrued comp, not about the cure.

Q. What did you understand Weil Gotshal to have told the court concerning Barclays' exposure with respect to cure payments?

MS. TAGGART: Object to form.

MS. SCHAFFER: Objection.

A. Again, at the hearings I was at, you know, I don't remember particularly every single reference. I can tell you that my understanding at the time was that the liabilities that Barclays -- that Barclays was going to assume the cure, severance, and accrued comp of the Lehman employees.

Q. Did you understand that there was some uncertainty concerning the actual cure payments that Barclays would ultimately make?

MS. TAGGART: Objection to form, foundation.

A. Sure. I understood that there was still open as to which contracts Barclays would



BURIAN

take.

**Q. And did you or did anybody on your team review the list of closing date contracts that were filed on September 18?**

A. I don't have a firm recollection on that topic.

**Q. You don't recall whether anybody on your team looked at that list and added up the cure amounts that were on that list?**

A. I don't know for sure if someone mechanically added up the -- the cure was discussed and we moved on pretty quickly from that issue.

**Q. Let's go back to Friday before the approval hearing. Let me give you what we have marked as Exhibit 473-B.**

A. Is this a.m. or p.m.?

**Q. Well, it is -- I think it is 20 minutes after midnight on the 19th. Because it is GMT time. So you should subtract four hours.**

**I want to first ask you if this is something you have seen before?**

A. Never saw this before. Well, I don't recall seeing this before.

BURIAN

we probably would have e-mailed it to her and she would have forwarded it as opposed to this looks like it has been typed into the body of the e-mail itself.

**Q. OK. Let me show you Exhibit 474-B. Unfortunately, this is a difficult document to read, but this is the way it was produced to us. Now, do you see at the top that you are copied or you are sent an e-mail with a list of e-mails below it?**

A. I do.

**Q. Do you recall receiving this e-mail?**

A. I don't recall specifically receiving this e-mail. I read it and I don't -- I'm not going to question or debate that I got it. I don't specifically remember the e-mail.

**Q. All right, let me start at the bottom and I'll just read the bottom e-mail which is September 19, 8:51 a.m. and it looks like it is an e-mail from somebody at Goldman Sachs to Danny Golden. Who is Danny Golden?**

A. Danny is a partner at Akin Gump, the law firm.

**Q. And he represented bond holders in**

BURIAN

**Q. It says, "Please see questions below from Houlihan," and then you see there is a list of questions.**

A. Yes, do you want me to read them.

**Q. No, I am asking you if you see that there is a list of questions here.**

A. Yes, I see a list of 1 through 19.

**Q. Do you know who prepared that list?**

A. I do not.

**Q. Do you know whether anybody from Houlihan followed up with Lehman on some or all of the questions that were listed here?**

A. You are making it sound like this is a Houlihan list as opposed to Jackie Marcus taking notes in a meeting and saying here, here are the things that Houlihan wants to know. And I can't make that assumption.

**Q. OK, all right, so this may be a list that Jackie Marcus prepared based on conversations with Houlihan?**

A. Yeah, I mean, again, we are not -- I'm not supposed to guess in a deposition.

**Q. But that's --**

A. Typically if there is a Houlihan list,

BURIAN

**connection with the Lehman bankruptcy?**

A. He represented an ad hoc group of Lehman creditors. I read it. I just quickly read it, if you want to save the time of reading.

**Q. I'm happy to read it. It says, "Danny, details of our argument are that the estate should only be authorized to sell Barclays those assets which are necessary to obtain the U.S. investment banking and broker/dealer business. The proposed sale goes way beyond this in that it allows Barclays to cherry-pick owned inventory, investment and other assets at windfall discount to FMV. The discount is at least several billion dollars."**

**Now, is that a statement that you were aware of before the approval hearing?**

A. I don't recollect whether I specifically read that statement. I was aware of chatter, as there is in every bankruptcy sale, about people who are not informed of what's going on, worried that Barclays was getting a good deal in a variety of respects. 11 o'clock in the morning, you know, as I

BURIAN

testified earlier, there are at least two, probably three conversations with Barclays -- I mean with Lehman about this topic. And there are clear mistakes in the e-mail about how the transaction was structured, and typically, while it is interesting to hear the uninformed market, what I rely on is my access, my diligence, and the information I get directly from the horses' mouth and my understanding of the transaction, directly.

So yeah, I heard from Danny in court, out of court or at some time, maybe I read this, maybe I didn't. I knew generally that there was a concern just like there was a concern about whether it was Barclays taking over European businesses. I mean, this is just one of many rumors or concerns about what was going on worldwide in Lehman. That creditors brought up.

**Q. And you did not attach much weight to it?**

MS. TAGGART: Object to form.

A. It is not about attaching much weight about it. But the deal never was that Barclays

BURIAN

was only getting what was the minimum necessary to run the U.S. I-B business.

The deal, as I was explained in the conference rooms, were that there was going to be a balanced exchange of the owned securities to match against, you know, the liabilities, and frankly, that was a positive for us, not a negative, because we were a bankrupt estate. We wouldn't be able to manage the book or hedge against the book. So the premise was wrong.

So when you are looking at that, hey, in retrospect, he may be dead on, but at the time, I would have, A, been very, very busy and not sleeping and I was probably on the phone with either the committee or trying to reach the Lehman folks, Mark Shapiro, et cetera. So this is not something that would be like a hold-your-horses, material moment.

**Q. You referred to a balanced exchange of assets and liabilities. Does that mean the assets would equal the liabilities?**

A. Other than Michael telling me I made 2 billion dollars at the end, and I have asked

BURIAN

twice for that exhibit which I know you have, I think Exhibit 19 from the Weil meeting, what was described to us was we are selling the franchise cheaply for 250 million and we all recognize that was -- people thought that was a great deal for the franchise and we are selling the buildings for fair value.

But when it came to the securities being transferred, the tradeable book, that that was a 100 percent balanced transaction against the liabilities against the book, plus the assumptions of cure, severance, and -- cure, severance and accrued compensation. There is no question that's the way it was described. And that's what Michael was addressing at that meeting when he went back to it that night.

**Q. So you made a comment that Michael is telling me I made 2 billion dollars. What does that mean?**

A. What it means is when --

**Q. Who is the "I" in Michael telling me I made 2 billion dollars, who is the I?**

A. Being facetious, I am, the creditors

BURIAN

of Lehman. I am the embodiment of the creditors of Lehman.

**Q. Oh, in other words, he is saying the creditors made 2 billion.**

A. The estate, we are up, we did well.

**Q. Now, going back to the assets, the purchased assets --**

A. You asked a question about what I think he meant when he said that I made 2 billion dollars which is what I reached for this to explain.

**Q. I think you answered it. My question was who was the "I" he was referring to?**

MS. TAGGART: Hold on, let me see.

A. Can you read that back, I don't know if I answered that.

MS. TAGGART: OK, there is a pending question. "So you made a comment that Michael telling me I made 2 billion dollars, what does that mean?"

Do you want to -- is there any more that you would like to answer on that question?

A. I don't think I was finished. You

BURIAN

interrupted when you said who is the I. I think I could be wrong.

But that the 2 billion I made was I was told golly, gee whiz, they are getting 44 to 45 in securities plus the 1.9 for a total of approximately 46 to 47. He rounded it up to 47, but they are taking 49.75 billion of liabilities and it is no longer in balance. I made 2 billion bucks over the weekend. And that is all there is. That's what the value is and Barclays is going -- not do me a favor, but Barclays is going to close and this is what the deal now is. So that's what the conversation about the I as in the creditors made money.

**Q. In other words, assuming those estimated figures were accurate?**

A. No.

MS. TAGGART: Object to form, misstates the testimony.

A. No, being told these are the figures upon which the closing is going to proceed and all that's left going on is lawyers documenting being told this is the deal.

BURIAN

**Q. Sir, you did not understand that the figures were estimates?**

MS. TAGGART: Objection to form and argumentative.

A. You did not say that before. Yes, I knew it was 44 to 45. So I made approximately 2 billion over the weekend.

**Q. Did you --**

A. But the corpus of securities were now nailed down and their value was 44 to 45 billion.

**Q. Did you understand that both on the asset side and the liability side, the figures Mr. Klein and others discussed with you were estimates?**

A. Let's take that compound question. On the liability side, no. I thought that 45 was -- 45.5 was as consistent as a number gets throughout this whole thing. And therefore, that was the balance of a loan. That did not appear to be an estimate, other than, other than as a rounding, right, because I doubt it was exactly 45.5 with no cents. But it was not a number that was moving or subject to change. It

BURIAN

was a rounding of a number.

The 4.25 was always consistent of what the -- I was told the cure -- not the cure. The severance and the accrued comp came off Lehman's books and records as what they accrued on their balance sheet. So that was the Lehman number for what was the liability.

I don't know if the camera can see the expression on the face because you are making it hard --

**Q. Did you --**

A. I don't know if the camera can see, you are making a lot of funny faces and I'm not done answering the question.

**Q. When you finish, I am going to follow up with a question because I found your testimony incredible.**

MS. TAGGART: No, no, no, you are not testifying about his testimony.

Why don't you answer --

**Q. Go ahead.**

A. That's fine, I am telling you what I thought in the room at the time and why --

**Q. What question are you answering? What**

BURIAN

**is my question?**

MS. TAGGART: Wait, wait, he will just answer the question that's fending.

**Q. I want to find out, do you know what my question is?**

MS. TAGGART: You can ask that after he answers the question.

MR. STERN: I am entitled to know if the witness is answering my question.

MS. TAGGART: You can read the question back next.

**Q. Sir, do you know what question you are answering?**

MS. TAGGART: Why don't you read back the last question.

**Q. No, no, no. Mr. Burian, do you know what question you are answering?**

MS. TAGGART: Don't answer that. You don't have to answer that.

**Q. What is the question?**

MS. TAGGART: If we have a question about --

**Q. What is the question you are answering?**

BURIAN

THE VIDEOGRAPHER: The time is now 4:57 p.m., we are now off the record.

(Recess)

THE VIDEOGRAPHER: This is the start of tape number 6. The time is now 5:10 p.m. we are now back on the record.

**Q. We were on the subject of whether there was a balance in the transaction between assets and liabilities. Was it your understanding prior to the closing that there would be perfect, equivalent, mathematical balance between purchased assets and assumed liabilities?**

A. I'm struggling with the word "perfect mathematical balance." And I don't know if there is a special meaning your attaching to that term. And certainly there was not a balance with respect to the 250 million for the franchise.

We believed and we still believe the franchise was worth more than that. But I did believe that when it came to the securities side and either the set-off or the repo, plus the liabilities assumed in respect

BURIAN

of employees and cures, that the intent of the transaction was that, based on the estimates as of closing, they would be in balance.

**Q. So that view is limited to the tradeable financial assets?**

MS. TAGGART: Object to form, mischaracterizes the testimony.

A. Yeah, tradeable -- some of these stocks were ill-liquids, they didn't trade much. But when you talk about the kind of things you find on Exhibits A and B, the securities, the -- they were supposed to -- I will get yelled at for not answering the question, so I am trying to be very, very careful to answer exactly the question.

So my understanding was that the other parts of the transaction were what they were, but vis-a-vis the Fed and then Barclays liabilities plus those assumed liabilities I referred to, they were supposed to match the assets, and net, net, net, what this transaction was about, was getting rid of the book, which is supposed to be a benefit to

BURIAN

us, and selling the real estate.

You could argue whether that was pure balance on the real estate, the appraisals were what they were, and I'm not challenging those appraisals, and then 250 for the franchise which that franchise could be worth more or less. So there was no balance there.

**Q. OK. And you understood that there were a number of additional purchased assets in addition to the securities, correct?**

MS. SCHAFFER: Objection.

A. There was a real estate, yes, there was the real estate and assets associated with the business, the franchise.

**Q. And the list of purchased assets that we went through earlier today?**

MS. TAGGART: Object to form.

A. I don't know if you are saying that as in addition to what I said or as further clarification to what I said because most of the list of assets and purchased assets relate to lawyers being careful in my understanding to define what is the franchise being transferred for 250 million dollars.

BURIAN

**Q. You did not have a definite valuation for all purchased assets in the aggregate as of the closing, is that right?**

A. Yes.

**Q. You did not have a definite valuation of all the assumed liabilities in the aggregate as of the closing, is that correct?**

A. Define valuation. We had -- we, again, 45.5 doesn't require a valuation. It is a number I'm told. There is a loan. The balance is rounded to approximately 45.5, that's a number. It is not a valuation.

So I had that and I had on the other liabilities, I had a description of how they were derived. One wouldn't value those liabilities. One would describe them and would perhaps, using your words from before, provide the estimate of them.

**Q. So you did not have a definite valuation of all the assumed liabilities in the aggregate as of the closing?**

MS. TAGGART: Object to form, asked and answered.

**Q. Am I right about that?**



BURIAN

A. I did not know at the closing which contracts you were going to take. I did not know at the closing the precise exact number of what the severance and accrued comp was for employees. I didn't know if an employee might have died between Saturday and Monday. I just didn't know that.

Q. In other words, there were conditions that might bear on the amounts ultimately paid for comp and severance?

A. On the comp and severance side, sure.

Q. If you look at your copy of the APA which is in front of you tab A of Exhibit 92.

A. Exhibit 92.

Q. This is the exhibit you have in front of you, I am sorry, Exhibit 26. Exhibit 26. Looking at Exhibit 26, tab A, page 11, do you see there under Section 2.3, there is a list of assumed liabilities.

A. There are.

Q. Did you have a valuation for the assumed liabilities listed under categories A, B, D, E, and F?

A. You said A, I was reading A, what --

BURIAN

Q. B, D, E, and F. My question is whether you had a valuation or an estimated valuation for those categories as of the closing?

A. No.

Q. And looking at the next page, looking at categories G and H, did you have a valuation or an estimated valuation for those categories of assumed liabilities?

A. Not a specific valuation, no.

MR. STERN: Let's mark as the next exhibit e-mail dated September 19, 2008.

(Exhibit 475-B, e-mail dated September 19, 2008 marked for identification, as of this date.)

Q. I have put in front of you Exhibit 475-B. I will ask you to look at it and tell me if you recognize it?

A. I do not. I recognize it is an e-mail from Barry Ridings to Mark Shapiro.

Q. That's the e-mail at the top and then below that, there is an e-mail from Eric Siegert to Barry Ridings copying you. Do you see that?

A. Yup.

BURIAN

Q. Mr. Siegert writes, and this is as of September 19, I believe it is listed as Minneapolis time, so I believe in New York, it's about 10:11 a.m. Mr. Siegert writes, how did the Fed actions --

A. Minneapolis is one-hour difference?

Q. Is it one or two?

A. I think it is one, right?

Q. In any event, it is 8:11 a.m. in Minneapolis. And Mr. Siegert writes, "How did the Fed actions potentially impact the value of the book. Will Barclays maybe get a windfall selling our marked down book at some stupid price to the Feds. We can't let that happen."

Do you recall seeing that message from Mr. Siegert to Mr. Ridings?

A. I remember talking about this issue. I don't remember this particular e-mail.

Q. What was the issue that this e-mail addresses?

A. I mean, shortly after the Fed let -- after the government let Lehman fail, they announced a rescue package of some sort that allowed a modification to the program under

BURIAN

which real estate and other types of securities could be borrowed against to preserve liquidity in the system and the question was whether or not there was -- whether or not that change in the Fed -- the first step was whether or not we were eligible for the Fed program because did we -- could we get liquidity and preserve the value of the assets that way.

And secondly, whether there was a quick flip going on where we were going to give assets based on Lehman's marks of value, but then the government program would ascribe higher values for the purposes of collateral to those same exact securities.

Q. And when Mr. Siegert referred to our marked down book, what do you understand he was referring to?

MS. TAGGART: Objection, foundation.

A. He was -- I believe he was referring to "our" as in Lehman, we take our -- we take things personally, and we were told that values had been dropping over the four to nine weeks prior to the sales transaction, and therefore, the assumption was that fair market value was

BURIAN

he says, "Interesting to understand what a bargain Barclays thinks it has."

And my question is, at any time before the sale approval hearing or after the sale approval hearing, did the committee believe that the acquisition gain that Barclays anticipated was a basis to object to the transaction?

MS. TAGGART: I am going to object to form and also for calling for privileged communications and instruct not to answer.

**Q. Did the committee ever have a view -- withdrawn.**

**Did you ever have an opinion one way or the other concerning whether the anticipated gain that Barclays announced on September 17, 2008, was a basis for the committee to object to the sale?**

A. I got the transcript as you saw on Sunday. After the transaction was approved. And we were in effectuation mode, not objection mode. The judge had signed an order.

So the context of your question about objecting isn't really relevant. The idea

BURIAN

that Barclays had said that they are going to book a profit on the transaction was extremely troubling and it was together with the other stuff we talked about, Fazio and Geer's review of those schedules that prompted me to demand that we get a full understanding and update as to what, exactly what was being transferred and at what values to whom. And that's why I was so aggressive in demanding that we have that meeting.

**Q. OK. Houlihan was aware, as of September 17, was it not, that Barclays had announced on September 17 that it anticipated booking a profit on the transaction?**

A. I told you earlier I'm not sure if I knew about it or we knew about on the 17th or 18th because we got retained the night of the 17th and we were not -- I was not at my own office. We were awaiting our turn to interview until very late. So as you said earlier, I don't know if I knew about that, 17th or the 18th.

**Q. But you may have?**

A. Yes, when I -- I'm not sure if I knew

BURIAN

it, then I guess I may have.

**Q. Earlier in the deposition, we looked at a Houlihan e-mail as of the 17th that referred to it, correct?**

MS. TAGGART: Object to form and asked and answered.

A. I don't remember that, particularly telling you on the 17th. I can't tell you now whether I knew that fact on the 17th or the 18th.

**Q. But you may have?**

A. I may have.

MS. TAGGART: Object to form.

**Q. At that time, at that time, did you consider that to be a basis for objecting to the sale?**

MS. TAGGART: Object to form.

A. A single isolated fact out of context is not or is a basis for objection? You object to a transaction based on the totality of the transaction and whether it is fair. The right response to that was to investigate, to ask questions, to find out. It was a basis for asking follow-up questions to understand what

BURIAN

was going on.

I did not spend a lot of time thinking about the accounting treatment by Barclays. The fact that they booked was less relevant than understanding what we were giving and what we were getting. And I was positive that, for instance, they were getting a great deal on the franchise. I didn't dive into at the time what made up the negative 2 billion of good will, how it was calculated, or what that number meant other than to do the investigations and ask the questions that we talked about earlier.

**Q. And in itself, in isolation, that fact, in your view, was not a basis to object?**

MS. TAGGART: Objection, asked and answered, objection to form.

A. Again, if someone said to me what those words mean is, and not understanding what you are hearing from everyone else in the transaction, Barclays is taking the book for 2 billion less than what it's worth, it certainly would have been a basis for objection and would have been a very, very serious conversation.

BURIAN

But telling me that some foreign company through accounting rules that I was not familiar with was taking a position on the assets that they were getting for accounting treatment when the transaction was complex, multifaceted and involved assets that I did know, I did believe they were getting on the cheap, e.g., the global franchise, the Lehman name and the rights thereto, wasn't a huge -- was it was important enough to follow up and ask, but not enough to run into court with my hair on fire.

**Q. You say it was important enough to ask. Did you ask anybody from Barclays before the sale approval hearing on what basis Barclays anticipated such a gain?**

A. We were not given that opportunity.

**Q. Did you attempt to ask that question?**

A. We were going to play linguistics about what does it mean to attempt. But when you are on the phone with somebody who says I only have a couple of seconds, here is the story, no, no, no scratch that, click, I am going to call you back, call you back, here is

BURIAN

the final numbers, it is bedlam here, I am really busy, you don't spend a lot of time asking them about what -- their adversary is -- their accounting treatment.

You are saying, hey, Mark, hey Jim, what is the deal, what are you giving and what are you getting. And I walked you through the time frame there. So to say that I didn't attempt is not fair, but to say in a short window we had of communication, it didn't come up, that is fair.

**Q. I am not asking you to make a judgment what's fair and not fair. I am asking you did you attempt to ask Barclays on what basis it anticipated recording a gain on the transaction?**

A. Before the sale hearing?

**Q. Yes.?**

MS. TAGGART: Object to form, asked and answered.

A. I amend my answer. Sorry, I confused the Lehman employees with Barclays.

I never had a conversation with Barclays about any topic prior to the sale hearing. So there was no discussion with

BURIAN

them about any of these topics.

**Q. Did you request any conversations -- withdrawn.**

**Did you request an opportunity to speak with anybody at Barclays about its anticipated gain?**

A. No.

MR. STERN: Let's mark this as the next exhibit. This will be 479-B.

(Exhibit 479-B, document Bates stamped CMTE 882 marked for identification, as of this date.)

**Q. Is this a document that you recognize or had ever seen before?**

A. It does not look familiar.

**Q. Do you recognize any of the names on this exhibit 479-B?**

A. Nope, I do not.

MR. STERN: This will be the next Exhibit 480.

(Exhibit 480-B, document Bates stamped HLHZ 9119 through 9120 marked for identification, as of this date.)

MS. TAGGART:

BURIAN

THE WITNESS: Do this mean it came from us, CMTE.

MS. TAGGART: The committee.

THE WITNESS: It came from us?

MS. TAGGART: The committee members, instead of Houlihan.

THE WITNESS: Oh, so it could be internal by the committee members.

MS. TAGGART: Right.

**Q. So looking at Exhibit 480-B, is this a series of e-mails that you recognize?**

A. I mean, it is redacted. So I do remember reading the last -- second to last e-mail, the response by Harvey to Luc.

**Q. Let's go to the part that's not redacted, starting with the bottom e-mail from Luc Despins, 9/22/2008, 7:15 a.m. AST, to Harvey Miller. "One, did it close; two, what happened to regulated capital." And what I wanted to ask is on the second question, what did you understand that to relate to?**

A. The controversy or discussions relating to the 15c3 accounts.

**Q. What did you know about those**

BURIAN

**Q. In that discussion or huddle, do you remember what the lawyers from Weil said?**

A. Not with specificity. I remember, it was for the most part, consistent with what I was told right before the hearing. You know, I think there was confusion about how we are going to handle DTC, which then played out in the hearing when Sheldon Hirschhorn stood up and going back and forth. I think there was some confusion about which RESIs were in and out. I think Lori was trying to explain to Luc some of what had already been explained to me since I got down to the hearing, I didn't have a chance to talk to Luc beforehand.

**Q. Did you or anybody else from Houlihan take notes of that discussion?**

A. To my knowledge, no. Just a conversation.

**Q. Any other recollection of what was said in that huddle?**

A. You know, it is not really relevant. I mean, wow, look at this crowd, I can't believe we are all at full capacity.

**Q. General commentary?**

BURIAN

A. When was the last time the bankruptcy court had the media staked out outside.

**Q. In that huddle, did Mr. Miller, Harvey Miller speak?**

A. I don't remember whether it was Lori or Harvey that went through what the changes were. I'm sure if we were talking about -- it was commentary about, wow, this is really, really short and it may go all night and kind of deal with all the objections and what are you going to do about people showing up who don't know where their assets are and cures and the attitude was it will be what it will be and we will muddle through.

**Q. At the courthouse, did anyone representing the committee complain to Lehman or Barclays about the inclusion in the sale of clearance box assets?**

MS. TAGGART: Objection, foundation.

**Q. The so-called 1.9 bucket?**

A. I understood that this was necessary to balance the transaction because of a combination of a loss of value in the portfolio and/or the fact that securities that were

BURIAN

supposed to be in that bucket weren't there and the reason I am giving an explanation was is that "complain," we said we would like to understand that, is that true. But it wasn't like how dare you add those securities to the package. It wasn't don't do it. It was why are they necessary and let's make sure we understand this later.

MR. STERN: Can you reread my question please.

(Record read).

MS. TAGGART: Same objection.

A. Is there a question?

**Q. Yes, that question.**

A. As I just said, don't think I would characterize it -- I don't know if you would characterize it as a complaint or not, but it was what -- explain to us how this is and why it is necessary.

**Q. And your previous answer referred to what you understood as of the hearing?**

A. My previous answer?

MS. TAGGART: Object to form.

MR. STERN: Withdrawn. Withdrawn.

BURIAN

Let's go off the record for a second.

THE VIDEOGRAPHER: The time is 6:02 p.m., we are going off the record.

(Recess)

THE VIDEOGRAPHER: The time is 6:04 p.m., we are now back on the record.

A. Are you going to reask me the question you asked off record?

**Q. Let me think about it.?**

MS. TAGGART: Off the record, there was some discussion about a prior question, answer,

I guess, all my question to you, and Jack can ask his own, is there anything that you want to clarify based on some of the off-the-record conversation?

A. Yeah, I, sitting here, I don't remember whether or not I am combining pre and post hearing information and the explanation for 1.9 billion box assets and honestly it has been a long day, I don't remember if I knew it at the hearing or I found out Saturday night or Sunday following the hearing. I just don't recollect right now.



BURIAN

THE VIDEOGRAPHER: Counsel, can I have one second. When you said off the record, I thought you were going off the record.

Can you please reiterate for the record what you said I had taken under the sound out.

MS. TAGGART: Before the witness answered, I had said that while we were off the record previously, there had been some discussion about an earlier question and answer that the witness had had and I asked the witness if he wanted to clarify anything on the record now.

THE WITNESS: Did you get my answer on the sound.

MS. TAGGART: I believe I did. Yes. Thank you.

A. That related to whatever my counsel just said.

**Q. Let's go back to the sale approval hearing. At any point before that hearing or during the recess at that hearing, did anyone acting on behalf of creditors committee express concern to Lehman or Barclays about the prospect**

BURIAN

**of including clearance box assets, the so-called 1.9 bucket among the purchased assets, if you remember?**

MS. TAGGART: Objection, foundation.

A. I don't specifically remember a conversation about the clearance box assets, but it was a consistent theme of what assets were being added, whether assets were being added and whether -- and why. So it wouldn't surprise me or not surprise me. I don't specifically recollect it being narrow to clearance box assets.

**Q. Now, the next day after you returned from the Sabbath and went to Weil, what was the first thing you did?**

A. I don't remember the first thing I did.

**Q. Do you remember generally what your activities were?**

A. Yeah, I found Mike Fazio and anybody else that was there, that was my people. I got an update on what occurred and where things stood.

**Q. Which of your people were there?**

BURIAN

A. I know for sure Mike Fazio was there. I don't remember whether Ann Miller and/or Tanja Aalto was there, A-A-L-T-O, and there probably was, there may have been probably was associate or analyst. But I don't have a firm recollection.

**Q. And while you were at Weil that Saturday evening, did you review any drafts of the clarification letter?**

A. I don't remember whether I got drafts of the clarification letter Saturday night into Sunday morning or after I went home to change and came back, whether I got it sometime on Sunday. I don't have a specific recollection of that timing.

**Q. Now, over what weekend, did you participate in any meetings with the creditors committee or any conversations with the creditors committee?**

A. I did.

**Q. Did you report to the creditors committee concerning the status of the transaction?**

MS. TAGGART: Just respond yes or no

BURIAN

to that.

A. I reported to the creditors committee my understanding of the status of the transaction.

**Q. And what did you tell the creditors committee.?**

MS. TAGGART: I am going to object on privilege and instruct not to answer.

**Q. What was the purpose of the your report to the committee concerning the status of the transaction?**

MS. TAGGART: OK, you can answer that. Don't reveal any of the substance of the communication and I object to form, but if you understand it, you can go ahead and answer it.

A. We were to keep the committee up to date on what we knew about a very important transaction of an estate that they were fiduciaries of.

**Q. Were you providing any legal advice to the committee?**

A. Me personally? Houlihan, me --

**Q. Houlihan?**

**BURIAN**

A. No, we don't provide legal advice to clients.

**Q. What did you tell the committee about the status of the transaction?**

MS. TAGGART: I am going to object and instruct not to answer on privilege.

**Q. Were there certain decisions that the committee needed to make based on the information you were providing?**

MS. TAGGART: Hold on. Object to form and foundation, but if you know, you can answer.

A. Can you read me back the question.  
(Record read)

A. It turned out to be no.

**Q. If the committee did not have any decisions to make, then what was the purpose of reporting information to them?**

MS. TAGGART: Objection to form.

A. I could tell you have never represented a creditors committee before.

**Q. Actually, I have.**

A. Oh, well, it's -- the creditors committee wanted to be up to speed and informed

**BURIAN**

about what was going on; was the Barclays transaction going to close or not going to close. Was there -- they had heard about JP Morgan issues, what were they, they wanted to be informed. They wanted to exercise their reasonable diligence to know what was going on.

**Q. Well, did the committee consider whether there might be an opportunity post closing to challenge the transaction?**

MS. TAGGART: I am going to object to --

**Q. Or a reason to challenge the transaction?**

MS. TAGGART: I will object on form and privilege and instruct not to answer.

**Q. Over the weekend leading to the closing, did the committee consider whether it should challenge the transaction or bring to the court's attention any aspects of the transaction?**

MS. TAGGART: Objection, form, foundation and privilege, and I'll instruct not to answer.

**Q. Did you have any discussions with**

**BURIAN**

**anybody at Weil either before the closing or after the closing, concerning whether it might be necessary to return and appear before Judge Peck to provide a further description of the transaction?**

MS. SCHAFFER: Objection to form.

MS. TAGGART: I am just going to -- what time period are you asking?

**Q. Let's say over the weekend leading to the closing or in the few days following the closing.?**

MS. TAGGART: You can answer.

A. Yes.

**Q. And with whom did you have any such discussion?**

A. Mainly with Mr. Miller in connection with my asking him if he was comfortable that he could close this transaction without going back to court and without committee consent.

**Q. When did that discussion take place?**

A. That conversation took place before we left, obviously. It took place in connection with my objection to the transfer of 15c3 cash, when I said something to the effect of how do

**BURIAN**

you transfer cash when a document is clear on its face that the cash is not part of that transaction. And then it came up in connection with our leaving when I asked whether or not we needed to consent to this or not.

**Q. So am I right that you had a number of conversations with Mr. Miller on this subject?**

MS. SCHAFFER: Objection to form.

A. The first one I tried to give you a context because it wasn't about this subject. It was about whether or not the estate should agree to give all that cash to Barclays. It wasn't like the conversation wasn't about going back to Judge Peck. The conversation was about, I don't know, I wouldn't be giving away that cash, and as you can see from the result, someone ultimately agreed with me that giving that cash was not the right answer.

The second conversation, I do agree with your characterization which is it was about, do you need me, and do you need, you know -- are you going to close and how are you going to close.

Now that I think about it, there may

BURIAN

have been a very short other conversation somewhere in the 11 to 12 o'clock range when we told the debtor that our committee was going to bed and that we were concerned that we were going to not be able to muster a quorum, and again, we are not involved in all these conversations, the clarification letter.

I think I may have said this earlier, if I didn't, I will say it again, we were not permitted to audit, to sit in the meeting where the clarification letter was discussed and negotiated and we said, you guys are going in there, we are just telling you if modifications come out of that meeting where you need our consent, we are losing the committee and we are concerned about a quorum.

So maybe that was more of an announcement and not a conversation. But it was, I want to be complete in those conversations -- in those interactions.

**Q. What did Mr. Miller say to you concerning whether he was comfortable closing the transaction without going back to court?**

BURIAN

A. I think his quote was I don't need you. I wasn't sure at the time --whether he meant generally I was worthless or about this transaction. But following up, he made it clear that I was welcome to stay or go, I was welcome to have quorum of the committee or not, but it was irrelevant and unnecessary.

**Q. I want to distinguish between two things which I think you said you discussed with Mr. Miller, with Harvey Miller.**

One was whether he was comfortable closing the transaction without going back to court. Second was whether he was comfortable closing the transaction without creditors committee consent.

Let me focus on the first. What did Harvey Miller say to you about whether he was comfortable closing the transaction without going back to court?

A. I apologize. When I said he was comfortable closing without me, I thought it was obvious that of course that meant he didn't need to go to court.

He did not -- I don't remember the

BURIAN

exact words, but he told me that this transaction was closing tonight, there was -- they were not going back to court.

**Q. Did he say anything to explain to you why he was comfortable closing the transaction without going back to court?**

A. It was not a debate. It was not a let's go through the following issues and analyze each one. It was his conclusion that this transaction was closing and I didn't say do you need to go to court. I said do you need my consent, my committee consent which was a lower standard than going back to court, and when he said to me no, you can do what you want, we don't need you, to me, that was obvious that he was not going back to court.

**Q. Did Mr. Miller explain to you why in his view committee consent was not necessary to close the transaction?**

MS. SCHAFFER: Objection to form.

A. We did not have a long discussion. The implication was clear that this was -- he did not explain it to me. I had my impressions, but he did not verbalize in that conversation a

BURIAN

detailed explanation as to why he was comfortable.

**Q. What were your impressions?**

MS. TAGGART: Objection to form, asked and answered.

A. Well, throughout the conversation really it was the follow-up, the repercussions of the main meeting with Michael Klein that all this stuff was plumbing, that when it came to what was in or out of the business, e.g., what was, you know, a contract or not a contract or was -- you know, the details with respect to particular assets that were necessary for operating the business, those were details that were consistent with the court order, they were transferring the operating business and lawyers will be lawyers they will fight about it. But these were not big deals vis-a-vis the real estate, they had compromised it and that was done and consistent with more or less what Lori said. And the big issue was on the securities where we were both comfortable that if anything net, net, net, this was better, not worse, than what was described to the court.

BURIAN

So the conversation with Harvey was -- the foundation of the conversation with Harvey about do you need me, e.g., do you need this committee to consent to anything was premised on or following the explanation we both received as to what the transaction was.

**Q. Now, what you just testified to, are those statements that Mr. Miller made to you or are those are inferences that you are drawing?**

MS. TAGGART: Object to form.

A. I was clear in explaining to you the context of his statements and then you followed up and asked me what were my impressions and I explained to you why I believe Harvey was comfortable at the time or my understanding of why Harvey was comfortable at the time because of the background of our interaction just a short period before the conversation.

**Q. So those were your impressions, not precisely what he said?**

A. As I said to you before, it was not a debate or an explanation. Harvey told me his conclusion in -- as a summation of our

BURIAN

conversations.

**Q. What did he say specifically on that?**

MS. TAGGART: Objection form, asked and answered.

A. Define "what." You said, What did he say about that? Define "that."

**Q. What, if anything, did he say specifically concerning whether in his view it was necessary to have committee consent in order to close the transaction?**

MS. TAGGART: Objection, asked and answered.

A. The best I can do for -- as close as I can get to for a quote was I don't need you. I don't care if you stay or go.

MR. STERN: Go off the record.

THE VIDEOGRAPHER: The time is 6:25 p.m., we are now off the record.

(Recess)

THE VIDEOGRAPHER: The time is 6:25 p.m., we are now back on the record.

**Q. We have been talking about conversations that you had at Weil Gotshal on the 21st going into the 22nd of September, 2008.**

BURIAN

Based on everything you learned about the transaction over that weekend before the closing, based on what you were told about the transaction, based on what you read in the agreements that you were given, at any time after the closing, let's say between September 22 and September 30, did you have a discussion with anyone concerning whether it would be prudent or necessary to return to Judge Peck concerning the transaction?

MS. TAGGART: I am going to object on privilege to the extent that's a discussion with the committee, but if you spoke to anyone outside of Houlihan and the committee on that topic, you should go ahead and answer.

A. I don't recollect conversations with third parties about going back to Peck other than as someone else might have thought it was an implied threat when they said things like we want to understand it better, we want a list of the assets we, want to understand the marks, we want to know why the premark was 50 and post mark was 44, 45. So when you're pushing for

BURIAN

that information, but I don't believe I ever said the words "or else" or said, you know, we are going to Judge Peck or something like that.

**Q. After the closing, did you ever have any discussion with anybody at Weil or do you know whether Milbank had any discussion with anybody at Weil concerning whether it would be necessary or appropriate or warranted to return to Judge Peck concerning the transaction?**

A. Yes.

**Q. What were those discussions?**

MS. TAGGART: I am going to just caution you not to reveal any attorney/client privilege. You can answer if you communicated with someone other than Milbank and the committee and Houlihan and also why don't we take it through April of this year.

A. Well, --

**Q. Let me rephrase the question. Between the time of the closing and November 11, 2008, did anyone from Houlihan or Milbank have any discussion with anybody from Weil concerning whether it would be necessary or warranted to**



BURIAN

return to Judge Peck concerning the transaction or whether it would be appropriate to appeal his sale order?

MS. TAGGART: Objection, foundation as to Milbank.

You can go ahead and answer.

A. I don't know about Milbank. And I don't remember any nonprivileged conversation with a third party regarding appeal of the sale order.

What I -- I said yes before, but I think we are miscommunicating about my yes.

Q. Well, do you recall discussions on this subject that occurred between the time of the closing and November 2008?

A. Again, this subject being narrowly to appeal?

Q. To go back to Judge Peck or to appeal.

A. And go back to Judge Peck for what reason?

Q. Well, either to seek reconsideration, to provide him with information. Or any other reason you may have discussed?

MS. TAGGART: Same limitation.

BURIAN

A. I don't remember the specific dates and in that November time period, I was still in my trust-and-verify mode where I guess naively, in retrospect, I assumed the transaction was as described and no assets were taken in excess of the values we were told.

So in that time frame, we really, my focus and Houlihan's focus was to get a reconciliation. I would be surprised but I can't be clear if it is in the November time frame if there wasn't a nonprivileged conversation where it was said in my presence or said to Weil or someone else, if this is not right, we have got to get those assets back and that would presume an action before Peck. But it was not about appealing the order because it was way after the ten-day period and I can't even tell you for sure that was in the November time frame.

MS. TAGGART: I think that we have gone over time. I'm willing to make some small accommodation.

MR. STERN: Just a few more questions.

Q. Did the committee ever consider making

BURIAN

a motion for reconsideration of the sale order?

MS. TAGGART: Objection and instruct not to answer on privilege.

Q. Did the committee ever consider appealing the sale order?

MS. TAGGART: Same objection and instruction.

Q. Did the committee ever consider making a motion for expedited discovery in order to obtain information that the committee believed it was missing?

MS. TAGGART: Same objection and instruction.

MR. STERN: Thank you. No further questions.

MS. SCHAFFER: I don't have any  
(Continued on next page for jurat)

BURIAN

questions.

MS. TAGGART: That concludes the video record for today. The time is now 6:32 p.m., we are off the record.

SAUL BURIAN

Subscribed and sworn to  
before me this day  
of December, 2009.

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 DEPOSITION OF SAUL BURIAN

13 New York, New York

14 April 29, 2010

15  
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 30252  
19  
20  
21  
22  
23  
24  
25

Page 10	Page 11
<p>1 BURIAN</p> <p>2 business.</p> <p>3 Q. What was the purpose of the call?</p> <p>4 A. To provide that update and to make</p> <p>5 sure the committee was aware of what was</p> <p>6 happening.</p> <p>7 Q. You were providing an update about the</p> <p>8 negotiations that you were participating in over</p> <p>9 the weekend with respect to the Barclays sale</p> <p>10 transaction?</p> <p>11 A. Not exactly, no. The call was</p> <p>12 scheduled to give an update and perhaps provide</p> <p>13 an update of negotiations that we may have</p> <p>14 participated in. At the time of the committee</p> <p>15 call, we had not participated in any such</p> <p>16 negotiations.</p> <p>17 Q. So what were you updating the</p> <p>18 committee about in the call?</p> <p>19 A. It was a previously scheduled call.</p> <p>20 It was a weekend, so we had a time. What we</p> <p>21 tried to do was give them an update of what we</p> <p>22 then knew regarding the transaction.</p> <p>23 Q. And at the time of the call, had you</p> <p>24 been over at Weil while the negotiations were</p> <p>25 going on or the deal was being finalized?</p>	<p>1 BURIAN</p> <p>2 A. We were at Weil Gotshal on the 25th</p> <p>3 floor on and off starting Friday night through</p> <p>4 the closing -- through Sunday -- Monday early</p> <p>5 morning.</p> <p>6 Q. You write that -- let me just ask you,</p> <p>7 what do you remember about that call in terms of</p> <p>8 substance?</p> <p>9 A. That call in particular?</p> <p>10 Q. Yes.</p> <p>11 A. It wasn't very substantive. I don't</p> <p>12 remember exactly the call, honestly. We didn't</p> <p>13 have a lot of answers to people's questions. We</p> <p>14 gave them an update, that we are still waiting</p> <p>15 for an understanding of the assets that were</p> <p>16 being transferred.</p> <p>17 We described to them what appeared to</p> <p>18 be some confusion as to the JP Morgan issues. I</p> <p>19 remember describing that there were very large</p> <p>20 rooms and a lot of people getting very excited</p> <p>21 and JP Morgan being leaned on to do certain</p> <p>22 things that they were refusing to do.</p> <p>23 I remember mentioning that the DFC was</p> <p>24 also having clearance and other issues and</p> <p>25 demanding something from someone, but that, you</p>
Page 12	Page 13
<p>1 BURIAN</p> <p>2 know, we did not have details.</p> <p>3 Q. Do you remember anything else said in</p> <p>4 the call?</p> <p>5 A. I remember that we discussed concern</p> <p>6 about how -- which assets were moving, who the</p> <p>7 assets were owned by, which entity, and what</p> <p>8 their valuations were.</p> <p>9 Q. Anything else that you recall?</p> <p>10 A. You can prod my memory, but --</p> <p>11 MR. TECCE: I just caution him not to</p> <p>12 testify to the extent it is attorney/client</p> <p>13 communications.</p> <p>14 But otherwise, you can answer.</p> <p>15 A. There were so many committee calls</p> <p>16 during those few days. There may have been an</p> <p>17 update with respect to Farr, the Nomura</p> <p>18 transaction. I don't remember if it was that</p> <p>19 transaction or not.</p> <p>20 At the same time, there was an</p> <p>21 instability in some of the Asian assets for</p> <p>22 Lehman which we were trying to focus on. But</p> <p>23 again, I'm trying to be fully responsive but</p> <p>24 also not stretch. I don't remember exactly.</p> <p>25 Q. When you say you remember discussing</p>	<p>1 BURIAN</p> <p>2 concern about which assets were moving and what</p> <p>3 their valuations were, can you be more specific</p> <p>4 in what you're talking about?</p> <p>5 A. The committee asked us a very simple</p> <p>6 question, what assets are going and what are</p> <p>7 they worth, and unfortunately, we had to tell</p> <p>8 them we were not sure what assets were moving,</p> <p>9 nor do we have a reliable update as to what they</p> <p>10 were worth or how they were booked.</p> <p>11 We were asked whether they were LBHI</p> <p>12 assets or LBI assets, how the RESIs were</p> <p>13 treated, and we expressed concern that we</p> <p>14 honestly were not sure. The understanding was</p> <p>15 that there were -- that we had old information</p> <p>16 relating to what the assets are and that we were</p> <p>17 going to get an update as to how they were being</p> <p>18 treated for the transaction.</p> <p>19 Q. In the third sentence of your letter</p> <p>20 to the committee, you write, "It was critical to</p> <p>21 get your input."</p> <p>22 What input was that?</p> <p>23 A. Well, there were a variety of things</p> <p>24 that we got input on. The problem is -- help me</p> <p>25 out here -- everything was -- most of the call</p>

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<p>1 BURIAN</p> <p>2 was legal issues in the call.</p> <p>3 MR. TECCE: You can't answer the</p> <p>4 question to the extent it reveals</p> <p>5 attorney/client communication. If it is a</p> <p>6 discussion about your analysis of the</p> <p>7 transaction with the committee, then you can</p> <p>8 testify to that generally.</p> <p>9 MR. THOMAS: I think you would agree</p> <p>10 if it is not for the purpose of providing</p> <p>11 legal advice, it is not attorney/client</p> <p>12 protected.</p> <p>13 MR. TECCE: No, but I -- I think -- I</p> <p>14 don't want to clutter your record, but I</p> <p>15 think my instruction is pretty clear.</p> <p>16 If it is an attorney/client</p> <p>17 communication, you can't get into it. If it</p> <p>18 is you advising the committee about your</p> <p>19 understanding about the economic analysis of</p> <p>20 the transaction, then you can get into it.</p> <p>21 I don't know that he can parse through</p> <p>22 his mind what was done for the purposes of</p> <p>23 providing legal advice or not.</p> <p>24 Q. My question is, what is the critical</p> <p>25 input that you got from the committee that night</p>	<p>1 BURIAN</p> <p>2 in the call?</p> <p>3 A. The critical input was a recognition</p> <p>4 in light of the hour that we were uncomfortable</p> <p>5 making a firm recommendation with respect to the</p> <p>6 transaction, and that if there were serious</p> <p>7 issues, that we were not to make commitments on</p> <p>8 behalf of the committee in light of the fact</p> <p>9 that they couldn't be fully informed and that --</p> <p>10 I am going to keep answering unless you object.</p> <p>11 I don't know where the legal analysis and the</p> <p>12 practical analysis ends.</p> <p>13 But the idea that we specifically</p> <p>14 asked the company prior to the call that this</p> <p>15 was it, we were not going to -- we were losing</p> <p>16 the people in Japan. We were losing our</p> <p>17 chairman, one of the chairmen to the committee</p> <p>18 after this call. Do you need us to consider</p> <p>19 consenting to something?</p> <p>20 And we were told no.</p> <p>21 And we discussed with the committee</p> <p>22 what to do when they were no longer available,</p> <p>23 since there was nothing to consent to or to</p> <p>24 specifically present to the committee, and that</p> <p>25 was the most important discussion during that</p>
Page 16	Page 17
<p>1 BURIAN</p> <p>2 call.</p> <p>3 Q. Did the committee give you authority</p> <p>4 to consent?</p> <p>5 A. No.</p> <p>6 Q. What did they say in terms of whether</p> <p>7 you could consent or not?</p> <p>8 MR. TECCE: Again he has to be</p> <p>9 cautioned if this conversation with the</p> <p>10 committee took place in the context of</p> <p>11 discussion with his counsel, he can't speak</p> <p>12 to it.</p> <p>13 MR. THOMAS: It is a direction from</p> <p>14 the committee on a course of action by</p> <p>15 Houlihan Lokey.</p> <p>16 MR. TECCE: We can go off the record</p> <p>17 and talk to him about what was said. But if</p> <p>18 that direction was given to their counsel,</p> <p>19 then that's not something that he is free to</p> <p>20 testify to.</p> <p>21 MR. THOMAS: First of all, just</p> <p>22 because it came from the counsel doesn't</p> <p>23 mean it's necessarily privileged.</p> <p>24 Q. Do you remember who was doing the</p> <p>25 talking on behalf of the committee?</p>	<p>1 BURIAN</p> <p>2 A. The committee is not a single</p> <p>3 individual. The committee is a body of -- made</p> <p>4 up of individuals. I feel comfortable saying</p> <p>5 that I was directed as a Houlihan rep in the</p> <p>6 room that there was nothing that we were asked</p> <p>7 to consent to, we couldn't give a -- forget</p> <p>8 about complete. We couldn't give a coherent</p> <p>9 explanation of exactly what the transaction was</p> <p>10 at that time. And that we were instructed not</p> <p>11 to make any commitments on behalf of the</p> <p>12 committee.</p> <p>13 Q. Under any situation?</p> <p>14 MR. TECCE: Objection to the form of</p> <p>15 the question.</p> <p>16 A. Under any situation? We didn't ask if</p> <p>17 the building was on fire what to do. We asked</p> <p>18 what to do if -- it was very hard at times to</p> <p>19 even guess what request would be made of us, and</p> <p>20 therefore, instead of sitting there and trying</p> <p>21 to think of every hypothetical, we were told --</p> <p>22 we gave the debtor fair opportunity. We've</p> <p>23 asked for explanations, we've advised them as to</p> <p>24 when the committee was meeting, and in fact had</p> <p>25 delayed the meeting throughout the day until the</p>



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<p>1 BURIAN</p> <p>2 believe you were preserving?</p> <p>3 MR. TECCE: Objection to form.</p> <p>4 A. I did not think of it in anything</p> <p>5 other than generally, that if someone -- if</p> <p>6 they -- if Barclays took more assets or Lehman</p> <p>7 gave Barclays more assets than what they told us</p> <p>8 or told the judge, one way or another, we would</p> <p>9 get them back. They would be hearing from us or</p> <p>10 from the LBI estate.</p> <p>11 I did not think about what type of</p> <p>12 claim that would be. You know, I didn't spend</p> <p>13 any time on that.</p> <p>14 Q. You write, "We did not consent." You</p> <p>15 put "consent" in quotes. Why did you do that?</p> <p>16 A. Because I was referencing the legal</p> <p>17 obligation -- not the legal obligation. The</p> <p>18 court order, the court order had this idea that</p> <p>19 the committee would have a consent right. It</p> <p>20 was a defined right of consent. The debtor can</p> <p>21 do what they want as long as they are</p> <p>22 comfortable legally and willing to suffer the</p> <p>23 consequences if they are wrong, without going to</p> <p>24 a committee for consent. The only reason we had</p> <p>25 a consent right is because of what was written</p>	<p>1 BURIAN</p> <p>2 into the order.</p> <p>3 So I was referencing the fact that we</p> <p>4 had more than just whatever any creditor would</p> <p>5 have. We had a -- you know, we typically</p> <p>6 have -- we had a specific consent right.</p> <p>7 Q. Did you ever tell anyone from Barclays</p> <p>8 that you did not consent to the transaction?</p> <p>9 A. I never -- I don't remember</p> <p>10 specifically. I do remember at the -- telling</p> <p>11 Michael Klein very clearly that I'm relying on</p> <p>12 his and the debtor's representations. I can't</p> <p>13 confirm or deny, and that we will get a</p> <p>14 reconciliation at the end.</p> <p>15 Q. And you --</p> <p>16 A. I was also never asked for a consent</p> <p>17 by Barclays.</p> <p>18 Q. Do you recall telling anyone on the</p> <p>19 night/morning before the transaction closed that</p> <p>20 the committee did not consent?</p> <p>21 A. I made it very clear that the</p> <p>22 committee was not asked for a consent. We</p> <p>23 didn't go in and say don't close this</p> <p>24 transaction, we do not consent. We made it very</p> <p>25 clear that we don't have the capacity to consent</p>
Page 28	Page 29
<p>1 BURIAN</p> <p>2 or not, and we haven't been asked to consent to</p> <p>3 anything.</p> <p>4 Q. How did you make that clear?</p> <p>5 MR. TECCE: I would like to have a</p> <p>6 general objection. The purpose of this</p> <p>7 deposition is going over his economic</p> <p>8 analysis. I have given you some leeway, but</p> <p>9 these questions about what he said about</p> <p>10 committee consent has nothing to do with his</p> <p>11 economic analysis of the transaction.</p> <p>12 Go ahead, you can answer.</p> <p>13 MR. THOMAS: It is coming right out of</p> <p>14 a document we just got yesterday.</p> <p>15 A. We covered this last deposition too.</p> <p>16 What was your question again?</p> <p>17 Q. How did you make that clear?</p> <p>18 A. Leading up to the committee hearing,</p> <p>19 meeting, hearing, committee meeting, we told</p> <p>20 debtor representatives that we needed more</p> <p>21 information. We had to brief the committee,</p> <p>22 we're going to lose the capacity to consent.</p> <p>23 Thereafter, the most -- you know, it</p> <p>24 was a while ago. The most clear conversation</p> <p>25 was with Harvey Miller, where I said to him, you</p>	<p>1 BURIAN</p> <p>2 know, do you need me, do you need anything?</p> <p>3 He said -- well, he made a joke, he</p> <p>4 said, I never need you. He also said, no, we</p> <p>5 don't need you, we are going forward.</p> <p>6 At the end of the Michael Klein</p> <p>7 meeting, I also made clear -- Tom Roberts was</p> <p>8 there, Harvey was there -- gentlemen, we can't</p> <p>9 possibly diligence this. We can't consent or</p> <p>10 not consent to this.</p> <p>11 Q. Did you put the word "consent" in</p> <p>12 quotes to indicate that you weren't formally</p> <p>13 giving consent while nonetheless not objecting?</p> <p>14 MR. TECCE: Objection to form.</p> <p>15 A. Not really. It is sort of -- there is</p> <p>16 a committee approach and me personally. Again,</p> <p>17 as my e-mail says, if this transaction were the</p> <p>18 transaction that closed, it was better than at</p> <p>19 least I expected. And therefore, I might or</p> <p>20 might not have made a recommendation.</p> <p>21 But we did not give any consent.</p> <p>22 Q. In the next paragraph, you write that,</p> <p>23 "I have attached to this e-mail the final</p> <p>24 version of the clarification letter that details</p> <p>25 the modifications."</p>

BURIAN

Q. And the all in approximate value of 47 billion, how did you calculate that?

MR. TECCE: Objection to form.

A. I took Barclays and Lehman's gross-up of the assets to 45 billion, plus the 1.9, to round to 47.

Q. And what do you mean by "gross-up"?

A. Well, they said to me -- made it sound like they were doing me a big favor -- they were really only worth 44 to 45 billion, but we agreed they would be worth 45 billion for closing purposes.

Q. Is that what you recall, they agreed they would be worth 45 billion for closing purposes?

A. Are you asking me what they told me or what I -- or -- that that's what happened at the closing?

Q. Do you recall them telling you that?

A. Yeah. At the Sunday night, we were told they were treating these assets as 45 billion and therefore, the net transfer to Barclays was 47 billion.

Q. You go on to write, "They are

BURIAN

forgiving the Fed loan of 45.5 billion and assumed liabilities of 4.2 billion"?

A. 4.25.

Q. "4.25 billion, for a total of 49 plus billion"?

A. Correct.

Q. The 4.25 billion, where does that come from?

A. That was the original number in the APA or disclosed to the Court for what the combination of cure and employee expenses that were supposed to be assumed by Barclays. I believe that that number was adjusted down to 3.75 at the Friday hearing, but Sunday night everyone still kept talking about 4.25, and I got confused.

Q. At this time, did you understand that the cure estimate was an estimate of potential cure?

MR. TECCE: Objection.

Q. And that Barclays had an option which contracts to assume?

MR. TECCE: Objection to form.

THE WITNESS: Jamie, what do I do when

BURIAN

you say that?

MR. TECCE: You can answer the question. That's OK.

A. My understanding was that this was the company's and Barclays' good faith estimate of the range of what it would cost to run the broker/dealer, the contracts they might need.

Q. Did you understand it to be an estimate of potential cure in terms of what potential exposure Barclays might have?

A. We knew there would be revisions. For instance, since Barclays needed a Bloomberg contract, they probably have one, and the fact that we owe a couple hundred grand on Bloomberg terminals, you know, maybe they wouldn't pay that. So I understood it to be an estimate.

Q. You are an attorney, you read the contracts, right?

A. I am a retired attorney and I read most of the contracts.

Q. Did you have an understanding that Barclays could elect to assume zero contracts and have zero cure payment liability?

MR. TECCE: Objection to form.

BURIAN

You can answer.

A. I understood that legally Barclays could take or not take what they like, but economically, they would need certain assets to run their business, and that would be highly impractical.

Q. You go on to write, "Depending on how they do liquidating the book, they will make or lose money." Do you see that?

A. Yes.

Q. Can you explain what you mean by "depending on how they do liquidating the book"?

A. They are getting 45 billion dollars of assets. They are going to hold them, they are going to sell them, they are going to do something with them, and whatever they do, they do. They will make money or lose money.

You know, notwithstanding your colleague's oral argument, we have never been against Barclays making money or losing money on the deal if they want to take the risk to hold their assets long term or short term.

Q. So there is no requirement that there be a certain net relationship between assets and

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<p>1 BURIAN</p> <p>2 liabilities on the deal?</p> <p>3 MR. TECCE: Objection to form.</p> <p>4 A. There absolutely was.</p> <p>5 Q. Where is that found?</p> <p>6 A. What I said was depending on what they</p> <p>7 do in the future, they may make money or lose</p> <p>8 money.</p> <p>9 Q. Where is that requirement found?</p> <p>10 A. We have gone through this before. I</p> <p>11 will tell you again what my understanding is,</p> <p>12 and what we believe was represented to the Court</p> <p>13 was that we all knew Barclays was making a lot</p> <p>14 of money in buying the broker/dealer, and we all</p> <p>15 suspected the appraisals may come out on the low</p> <p>16 side of reasonable when it comes to the</p> <p>17 property.</p> <p>18 But when it came to the trading book,</p> <p>19 they were being sold in good faith for fair</p> <p>20 market value, the way that any broker/dealer</p> <p>21 would mark their books.</p> <p>22 Q. You go on to write, "We did not</p> <p>23 consent," and you emphasize "not" in all</p> <p>24 capitals. Why were you giving that such an</p> <p>25 emphasis? Was there an issue of whether you</p>	<p>1 BURIAN</p> <p>2 would consent?</p> <p>3 A. No. It was because there was concern</p> <p>4 about -- by the committee about whether we were</p> <p>5 going to be asked for our consent or not, and a</p> <p>6 lot of the business people on the committee were</p> <p>7 concerned about, well, what happens at 2 in the</p> <p>8 morning if they turn to you and say, if you</p> <p>9 don't consent, we don't close, and the fate of</p> <p>10 the free world is on your shoulders.</p> <p>11 And the committee discussed it and</p> <p>12 said, you know, don't succumb to pressure. We</p> <p>13 don't know enough to consent or not consent, the</p> <p>14 same way we did not support the sale at the</p> <p>15 Friday hearing. And I wanted to make it clear</p> <p>16 that we followed direction.</p> <p>17 Q. Do you believe -- did you believe that</p> <p>18 your not consenting might prevent the deal from</p> <p>19 closing?</p> <p>20 MR. TECCE: Objection to form.</p> <p>21 A. This is a hypothetical. I do believe</p> <p>22 that our nonconsent -- I did believe our -- I</p> <p>23 turned out to be wrong, that the fact that we do</p> <p>24 not consent would provide some discipline on the</p> <p>25 parties and not allow Barclays to take advantage</p>
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<p>1 BURIAN</p> <p>2 of the debtor and take more than what the judge</p> <p>3 was told.</p> <p>4 Q. When you left the building, you left</p> <p>5 before the deal was signed; is that right?</p> <p>6 MR. TECCE: Objection to form.</p> <p>7 A. Yes.</p> <p>8 Q. When you left the building, did you</p> <p>9 think they were going to go ahead and close or</p> <p>10 not close?</p> <p>11 A. We were told unequivocally --</p> <p>12 unequivocally? We were told clearly that they</p> <p>13 were closing.</p> <p>14 Q. Even though you're saying that you</p> <p>15 didn't give your consent?</p> <p>16 A. I didn't -- I'm sure you know this.</p> <p>17 We didn't need to give consent or not. If they</p> <p>18 were closing with a degree of comfort that this</p> <p>19 was consistent with the court order, they were</p> <p>20 free to close with me or without me.</p> <p>21 Q. On Monday when you -- September 22,</p> <p>22 when you learned they had closed, did you --</p> <p>23 without committee consent, as you say, it is</p> <p>24 your position, did you think it was improper for</p> <p>25 them to close?</p>	<p>1 BURIAN</p> <p>2 MR. TECCE: Objection to form.</p> <p>3 A. I didn't have enough information to</p> <p>4 say yes or no. I personally thought that if</p> <p>5 they did what they said they were going to do,</p> <p>6 that was fine with me. But that was not a</p> <p>7 committee position.</p> <p>8 Q. What is it -- what do you mean when</p> <p>9 you say they did what they said they were going</p> <p>10 to do? What did they say they were going to do?</p> <p>11 A. What I described to the committee. If</p> <p>12 in fact 45 billion of assets were transferred</p> <p>13 for 47 billion of liabilities, so as Michael</p> <p>14 Klein said to me, you made 2 billion dollars</p> <p>15 this weekend, and all of the other items</p> <p>16 discussed, the other two items, I thought it was</p> <p>17 an OK deal to do.</p> <p>18 Q. Now, when you say 45 billion in</p> <p>19 assets, you didn't think the entire value of the</p> <p>20 assets being transferred was just 45 billion,</p> <p>21 did you?</p> <p>22 A. I was focusing on the issues in</p> <p>23 dispute. Every time you ask me a question and I</p> <p>24 answer, I am going to answer it in the context</p> <p>25 of your question. If you want, I will recount</p>

BURIAN

and say, you know, read the whole purchase agreement of all the assets that were transferred.

I was not talking about the real estate, the licenses, you know, and all the other items that were transferred, and I already said to you, and I said this the last deposition, that the committee was advised and we clearly understood that Barclays was getting what we thought was a very good deal in picking up a preeminent broker/dealer for merely 250 million bucks.

Q. When you said 45 billion most recently, you were referring to the securities --

A. The trading assets plus the cash, right? It turns out there was cash included.

Q. Plus the 1.9 billion clearance box assets?

A. Correct -- well, 45 -- correct, plus the 1.9, right, so 47 all in.

Q. You go on to write, "We said we understand" --

A. I'm sorry. I may have misspoke before

BURIAN

saw it in writing by someone who was standing up and saying this is the number.

Q. When was the first time you were aware that it might be 45 billion and not 45.5 billion?

A. I honestly don't remember.

Q. What time period? Was it near the time of the closing? Was it a month later, a year later?

A. It may have been -- well, it couldn't be a year later because December is not a year past September.

I don't want to guess. I think that that Sunday or Monday, it came up that there was confusion, and we asked what it was. I think the Sunday of the closing or the Monday of the closing was the first time I first started hearing about what was the exact loan number.

Q. So you are aware as of Sunday, September 21st, that the 45.5 number that Barclays was paying in cash might in fact be 45.0?

MR. TECCE: Objection to form.

A. No, no, no. I was told by Barclays it

BURIAN

when I said they were getting the 45 for the 47, and those numbers were off by 2 billion.

Q. Let me just clarify the numbers you meant.

A. It is here in the e-mail. We were going through it again. I was just talking too quickly.

But basically that they got, Barclays took roughly 47 billion of assets and was assuming 45.5 billion -- they were forgiving the 45.5 billion of the loan. It turns out it may have only been 45 billion. We were told it was 45.5. And again, let's change 4.25 to 3.75. And we made a mistake that night. So we were still net positive.

Q. When did you come to learn that it was 45 and not 45.5?

MR. TECCE: Objection to form.

A. When did I come to learn that fact? Honestly I'm still not sure. The first time I actually saw it from a reliable source was when I read the December JPM settlement with the LBI trustee and Barclays.

I believe that that's where I finally

BURIAN

was 45.5 and I believed them. There were issues, you know, just reconciliations of, you know, someone saying, oh, was it 45 or 45.5, but we clarified that Sunday night, and I told my committee it was 45.5 based on what I was told.

Q. Who told you it was 45.5?

A. Michael Klein.

Q. When did he tell you that?

A. He told me that Monday morning when we finally sat down and got an explanation of -- what does the clarification mean and what is really going on here. What is the transaction that they are closing.

Q. So if he told you that Monday morning, that wouldn't have been the source of your telling the committee 45.5?

A. That would have been.

Q. It would not have?

A. Would have been.

Q. He told you that Monday morning?

A. Yes.

Q. He told you that on Monday morning prior to your Sunday night committee call?

A. You are asking me about the e-mail



BURIAN

that was sent Monday morning to the committee.

Q. OK. Did you bring it up on the call, 45.5 on the call?

A. I don't remember. I definitely told them that there is a little I could tell them with specificity about any number, and they were waiting for understanding.

Did I specifically raise 45.5 versus 45? Honestly, A, I don't remember, and B, I think -- I know we talked about the 5, the valuation issues, the 5 billion. That issue may have gotten lost in that issue.

Q. You say, "We said we understand what they're telling us and expect to see computer runs of all transfers at some point in connection with the closing documentation."

When you say computer runs of all transfers, are you referring to the list of securities that transferred over to Barclays as part of the sale transaction?

MR. TECCE: Objection.

A. That might be part of it.

Q. What else? What else did you mean when you said computer runs of all transfers?

BURIAN

that we got Sunday, which we were told on Sunday to ignore.

Q. And in addition, beyond that list of securities that were transferred --

A. Well, again, are you telling me they were transferred, I should assume they were transferred?

Q. OK.

A. We went through this before. I don't know that, and I've actually been told that all the assets and securities on that list were probably not transferred. So I just don't know.

Q. So your testimony is that Houlihan Lokey didn't know what securities were transferred and still don't know that today?

A. I still do not have reconciliation of what Lehman assets were actually transferred from which accounts, from which debtor and what values were ascribed to them.

Q. You've added on a couple of things now.

Isn't it true that Houlihan Lokey knew in September of 2008 which securities were actually transferred over to Barclays?

BURIAN

A. Our understanding was these securities were in multiple accounts, perhaps in multiple names, with complicated clearing or transfer mechanics, and what I expected was a set of statements saying the following from the following account went to the following person that was marked at the following value. This transferred through DTC from these accounts.

I expected someone to give me the equivalent of a flow of funds at a closing. Here is what we got, here is where it came from, here is what it was worth as of the closing.

Q. Did you get that at some point?

A. For this question, I am assuming you mean Houlihan Lokey.

Q. Yes.

A. I'm here for the whole firm.

The answer is no.

Q. What did you get in terms of computer runs?

A. Well, we got -- I'm not sure it was a computer run. I will answer it more broadly. What we got was the same thing we got Sunday without numbers, that same list of securities

BURIAN

A. No. By the way, you didn't know that either.

Q. OK.

A. If you read the JP Morgan settlement, you were 7 billion shy. You didn't know what cash you got.

Q. Did you know -- did Houlihan know 99 percent of what securities had transferred over?

A. No. Well, I -- I can't say -- if I don't know the corpus, I can't tell you the percentage.

Q. Didn't you in fact --

A. So I don't know.

Q. Didn't you in fact get a list of securities as part of the collateral on Sunday?

A. We got Sunday a list of securities as of an indeterminate date with marks that we were told not to rely on.

MR. TECCE: I would like the record to reflect that his notice for today's deposition is not a notice that he is a 30(b)(6) witness.

THE WITNESS: Oh, I am sorry.

BURIAN

A. You are asking me whether 50, 60 people, if any of them had any conversation with some other group of 50 or 60 people over a three-month period. I honestly have no idea.

Q. The question was to your knowledge. Are you aware of any communications between the trustee's representatives and the committee's representatives?

A. The first time I had -- first time I can absolutely certainly tell you that I was involved in a conversation was, at some point in time Jones Day was retained on behalf of the estate, and they told me they were coordinating or -- with -- they were talking to the LBI estate about their issues as well.

MR. GREEN: Objection.

MR. TECCE: Objection. To the extent that --

A. This is all hearsay. I mean I -- I, Saul Burian, did not engage with the LBI estate about these issues. We have enough issues with the LBI estate.

Q. So your testimony is you're not aware of any communications in the month of September

BURIAN

of 2008 between yourself or other representatives of the committee and any representatives of the trustee?

MR. TECCE: Objection.

A. The testimony is I am not aware of when any of that group first discussed with any of the other group those issues. I have no idea.

Q. So you did have conversations with representatives of the trustee at Weil Gotshal on Sunday, but you don't recall discussing the 5 billion dollar issue?

MR. MILLS: Object to the form.

A. I do not specifically recall talking about -- I'm sure we talked about are you comfortable with the clarification letter, what's going on vis-a-vis the valuation of the assets. Do you know what date these things are booked at.

I'm sure there were conversations about the transaction. But I don't think it was, do you think that we are being ripped off by 5 billion dollars? I don't think it was the 5 billion dollar issue. I think it was more

BURIAN

general than that. You know, what's going on. Do you know what's being transferred. Are you comfortable with LBI's commitments of how much and where it is going to. That sort of thing.

Q. Was there any discussion -- would that discussion also include the fact that the parties were not using claimant's book values for the purposes of the deal?

MR. MILLS: Objection to form.

MR. TECCE: Objection to form.

A. Never -- did that come up in my conversation with the LBI trustee?

Q. Or the trustee's representatives.

A. I don't -- not in particular. I think we had this thing on Sunday. Clearly they had a list of assets, the draft Schedule A. It didn't match up.

Again, I think -- I would be surprised if we did not say to the trustee's reps, do you know what assets are moving, do you know as of what date they are booked. Do you know what modifications are being made to those values. Those would be the questions I would have asked.

Q. And wouldn't you have shared with them

BURIAN

information about the fact that the parties had agreed, as you say, to value the assets at a lower amount?

MR. TECCE: Objection to form.

A. I don't remember if we specifically said that -- I mean my assumption was they had the same Schedule A I had. There were lawyers in the room. Some of them were young, relatively young, who did seem to -- seemed to know surprisingly less than I did about the transaction. It was like the blind talking to the blind and deaf.

I'm not sure there is any -- those conversations, if they occurred, were short and unfulfilling.

Q. So the conversations would have involved the securities being transferred and their valuation, but you're not sure whether the specific issue of the fact that the parties were treating them at less than book value was discussed?

A. I'm saying in the context of that night, the conversations probably included me trying to find out what they knew about the

1 BURIAN  
2 transaction. Do you know if this is being  
3 transferred, do you know what values are being  
4 used. And then essentially telling me no.

5 Q. And do you recall one way or another  
6 whether in the course of those conversations you  
7 communicated the fact that the parties were not  
8 using the Lehman book values of the securities,  
9 but were rather using a lower negotiated value?

10 MR. TECCE: Objection to form.

11 MR. GREEN: Objection.

12 MR. MILLS: Objection to form.

13 A. I couldn't have communicated that  
14 because I didn't know it.

15 THE VIDEOGRAPHER: We are at the end  
16 of the tape. We are now going off the  
17 record. The time is 7:07 p.m.

18 (Recess)

19 THE VIDEOGRAPHER: We are back on the  
20 record, the time is 7:09 p.m. We are at the  
21 beginning of the tape labeled number 2.

22 A. Can you reask the question so I can  
23 finish?

24 Q. You weren't finished with your answer?

25 A. No, I wasn't.

1 BURIAN  
2 Q. Is that part correct?  
3 A. As of what date, sir?  
4 Q. As of the last date they were put on  
5 the books?  
6 A. No, I don't know that. I do know that  
7 we were given a run that they said was outdated  
8 and was not current that had the Lehman books at  
9 50 billion, roughly 50 billion. But no -- after  
10 we asked this question repeatedly, we were not  
11 told this was the marks as of the close of  
12 business on Friday.

13 Q. You are aware that when Barclays  
14 received at least part of the repo collateral,  
15 the securities in the repo collateral, that they  
16 looked at it and they thought it was worth less  
17 than what it was marked at?

18 MR. TECCE: Objection, form.

19 A. Marked at by who and when?

20 Q. So you don't know what I mean when I  
21 say less than what it was marked at?

22 A. Again, the problem is, you know -- and  
23 I don't know in the sense of I am sure that it  
24 was -- I'm pretty sure, I've not been told, that  
25 you mark -- that Barclays received assets and

1 BURIAN  
2 Q. The question is, do you recall one way  
3 or another whether or not in the course of those  
4 conversations with representatives of the  
5 trustee, you communicated the fact the parties  
6 were not using Lehman book values of the  
7 securities, but were rather using negotiated  
8 values?

9 MR. TECCE: Objection to form.

10 MR. MILLS: Objection to form.

11 MR. GREEN: Objection.

12 A. I can tell you clearly I would not  
13 have communicated that at the time. At the  
14 time, we believed the transaction was being  
15 negotiated off Lehman's books and records with  
16 respect to the fair market value of the  
17 securities as would be marked by any other  
18 broker/dealer at the time.

19 Q. At the bottom of the first page, you  
20 wrote, "The total purchased assets were books at  
21 approximately 49.4 billion dollars, but dropped  
22 in value to about 44 to 45 billion dollars." So  
23 that you knew that the book value on Lehman's  
24 books was in the 49 to 50 billion dollar range?

25 MR. TECCE: Objection to form.

1 BURIAN  
2 marked them for less than 50 billion. Mike told  
3 me that he was expecting to mark them at 47  
4 billion.  
5 So if that's what you are asking me,  
6 yes, we expected them to be less than 50 billion  
7 which is less than what they were marked by  
8 Lehman as of some time during the week prior to  
9 the closing.

10 If you're asking me whether I knew or  
11 thought that Barclays was going to take  
12 securities that they marked for the purposes of  
13 the transaction and then marked them lower on  
14 their books, that would surprise me, that would  
15 surprise me.

16 Q. I'm not sure I understand the last  
17 part.

18 A. That's what I understood your question  
19 to be. Where you asked me -- my understanding  
20 of your question was did I know that Barclays  
21 got assets and marked them lower than they were  
22 booked.

23 What I am saying is I believe I  
24 understood they were going to mark them for less  
25 than 50 billion, but I'm not sure why that's

BURIAN

even relevant. But if you are asking me did I expect Barclays to mark them as less than the fair market value at the time of the closing? No, of course not. That's what we expected the closing to be based on on both sides.

Q. You expected the closing to be based on fair market value?

A. We expected the closing to be based on the manner in which any reasonable broker/dealer would mark their books at the time; in particular, how Lehman was doing it. Many of the assets were assets that you needed -- you understood you needed some familiarity with them and therefore, the Lehman process.

Q. So when you wrote your sentence, the total purchased asset -- let me clarify. When you talk about the total purchased assets, you are talking about the trading assets?

A. The trading.

Q. The total purchased assets were booked at approximately 49.4 billion, but dropped in value to about 44 to 45 billion. Did you think that they were on, now on Lehman's books at 44 to 45 billion?

BURIAN

Q. If there was a difference between the value of the assets as marked on Lehman's books and accurate fair market value, which one of those two was relevant to you?

MR. TECCE: Objection to form.

A. You need to parse that because there is no simple answer to that. You are talking about a government Treasury bill? There is no difference. You are talking about -- you asked me a question --

Q. You are rejecting my predicate of the question?

A. No, because I can't answer the question the way it has been asked. If you want to say -- I can't answer your question. If you want me to explain, I'll explain. If you don't want me to explain, I won't explain.

Q. Can you answer the question of if there was a difference between the value of the assets as marked on Lehman's books and the accurate fair market value of the same assets, which one of those two would be relevant to you?

MR. MILLS: Objection to form.

MR. GREEN: Objection.

BURIAN

A. Whether they were uploaded and accounted for that way, I didn't think about it that way. What I was told was, and I believed was, that after a good-faith analysis of what happened on Friday in the markets, that this is what Lehman books would be if analyzing what the corpus of assets that were being transferred.

I don't know, there was so much paperwork -- when A&M took it over and everyone went to Barclays, I can't tell you that Friday night, someone actually typed into the accounting software, you know, the update. I don't know if that's true. I do know that what we were told was the value of these assets based on how these things were booked would be 44 to 45 and that Barclays was doing us a favor and rounding up to 45.

Q. What mattered to you was the fair market value of the assets and not what was -- what may or may not be on Lehman's books?

MR. TECCE: Objection to form.

A. What mattered to me is that these assets were fairly valued in a manner consistent with the Lehman process.

BURIAN

MR. TECCE: Objection to the form of the question.

A. Is that theoretical fair market value? Whose fair market value are you comparing Lehman's books to? How am I deriving the fair market value valuation?

Q. How do you understand it to provide fair market value?

A. It is your question -- tell me what you are asking and I will answer it.

Q. Previously you said fair market value, you used fair market value?

A. Correct.

Q. That's what you were interested in?

A. I said I was interested in how a broker/dealer would value the securities in a manner consistent with the Lehman's books and records, the process of the Lehman's records. Why don't we read back what I said. I am butchering it now because I am nervous. Why don't we read it back.

Q. Let me rephrase the question.

During the week, complete and utter financial chaos in the week of bankruptcy at



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<p>1 BURIAN</p> <p>2 Lehman, the marks on Lehman's books had not been</p> <p>3 fully updated, and there was a difference</p> <p>4 between the marks on their books and the</p> <p>5 accurate fair market value of those assets,</p> <p>6 which mark would have been relevant to you for</p> <p>7 the purposes of your analysis?</p> <p>8 MR. TECCE: Objection to form.</p> <p>9 A. Unfortunately, it is a more</p> <p>10 complicated answer than what you're asking me.</p> <p>11 Fair market value in a manner consistent with</p> <p>12 the way broker/dealers value their book. Not</p> <p>13 liquidation value, not dump and run, not, you</p> <p>14 know, then and there was a mistake, then yeah,</p> <p>15 fair market value would trump a mistake in the</p> <p>16 Lehman books.</p> <p>17 Q. And by --</p> <p>18 A. If you're talking about changing the</p> <p>19 manner of valuation, then no, that wasn't the</p> <p>20 case. If you want, I will give you a for</p> <p>21 instance. We are having this conversation and</p> <p>22 you insist on keeping it on a theoretical basis</p> <p>23 where I have been offering to explain it.</p> <p>24 Q. Are you finished with your answer? So</p> <p>25 as I understand your -- you're not aware of --</p>	<p>1 BURIAN</p> <p>2 when you referred to the book value or being</p> <p>3 booked at approximately 49 billion dollars, it</p> <p>4 is your testimony that you had no idea whether</p> <p>5 that was the then current book value of those</p> <p>6 assets?</p> <p>7 A. We were not -- well, then current as</p> <p>8 of Sunday night?</p> <p>9 Q. Yes.</p> <p>10 A. We did not know.</p> <p>11 Q. Did you ask anyone?</p> <p>12 A. Yeah.</p> <p>13 Q. Who did you ask?</p> <p>14 A. We asked the debtor reps who were</p> <p>15 still there and in and out. We asked lawyers.</p> <p>16 I don't think that specifically -- I mean, it</p> <p>17 became very clear after the, you know, when the</p> <p>18 debtor finally said OK, you're an official</p> <p>19 committee, we owe you some face time to explain</p> <p>20 the transaction to you, it became obvious</p> <p>21 that -- they said the 49 billion dollars was an</p> <p>22 old-and-cold number. So it wasn't a relevant</p> <p>23 question to say that number that's no longer</p> <p>24 relevant and old and cold, on what date was that</p> <p>25 booked at? It was silly question. As the night</p>
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<p>1 BURIAN</p> <p>2 progressed, it became less and less relevant.</p> <p>3 Q. By old and cold, you mean a number</p> <p>4 that had not been updated?</p> <p>5 A. It was no longer relevant.</p> <p>6 Q. Why was it no longer relevant?</p> <p>7 A. Because it was a mark that did not</p> <p>8 reflect the current book.</p> <p>9 Q. The current book or current market</p> <p>10 value of the assets?</p> <p>11 A. Those are the same.</p> <p>12 MR. TECCE: Objection to form.</p> <p>13 A. Current fair market value consistent</p> <p>14 with the way Lehman was doing it.</p> <p>15 Q. You write, "If this is not what</p> <p>16 actually happened, they will be hearing from us</p> <p>17 or from the LBI estate." Is that what actually</p> <p>18 happened?</p> <p>19 MR. TECCE: Objection to form.</p> <p>20 MR. GREEN: Join in the objection.</p> <p>21 A. To the best of my knowledge, what I</p> <p>22 described in this e-mail is far from what</p> <p>23 actually happened.</p> <p>24 Q. What actually happened do you believe?</p> <p>25 A. I don't really -- I don't have a full</p>	<p>1 BURIAN</p> <p>2 reconciliation of what actually happened. I do</p> <p>3 know that the assets that Barclays received with</p> <p>4 respect to the trading broker/dealer securities</p> <p>5 were, in fact, worth substantially more than</p> <p>6 what was represented.</p> <p>7 Q. What is the basis for your saying --</p> <p>8 first of all, what do you understand the value</p> <p>9 to be that you just referred to?</p> <p>10 A. I don't have a firm opinion on value</p> <p>11 sitting here today. I can tell you that I read</p> <p>12 the Jim Seery deposition and was shocked to</p> <p>13 learn that Friday morning, at the instruction of</p> <p>14 Barclays, Lehman changed the whole methodology</p> <p>15 of how they were supposed to value assets and</p> <p>16 just ran around and said if I had to dump 50</p> <p>17 billion of assets in three to five days, what</p> <p>18 would I get for them? Oh, 5 billion less than</p> <p>19 book. That was the first time, you know -- we</p> <p>20 never dreamed that people were looking at these</p> <p>21 assets on a liquidating, dump-and-run basis.</p> <p>22 Q. That's your interpretation of Mr.</p> <p>23 Seery's testimony?</p> <p>24 A. My interpretation of his testimony?</p> <p>25 Q. Yeah. What is the basis for what you</p>

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BURIAN

upon a review of the clarification letter?

MR. TECCE: Objection to form.

A. I believe that I sent this from my car and that I opened the clarification letter on my Blackberry and read that sentence, it was very hard to read on those things. So I do not believe that I read the whole letter. I believe that I looked for that provision, that sentence as to what was being transferred.

Q. You make a reference to doing a brief note explaining math, do you see that?

A. Yes.

Q. Is that Exhibit 760, the memo contained in 760?

A. Yeah, I mean, the committee was really put upon. We spent a lot of time, there were a lot of issues and my suggestion was let's try to put things in writing so that they can see it and help call go faster.

Q. Let me show you a document --

A. Whenever you are at an appropriate time, I would like to take a bio break.

Q. Sure, now would be great?

THE VIDEOGRAPHER: Going off the

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record, the time is 7:38 p.m.

THE VIDEOGRAPHER: Back on the record, the time 7:46 p.m.

(Exhibit 763, e-mail dated September 22, 2008 marked for identification, as of this date.)

Q. Let me show you a document we have marked as 763. Do you recognize that document?

A. I'm looking at it. Yes, -- oh, here is a 45.5. yeah, so I was right, I heard about it Sunday or Monday. Yeah, I see it.

Q. The question is do you recognize this e-mail you received on September 22?

A. I do.

Q. From Michael Fazio? OK. So you started to mention about the 44 versus 45.5. Do you recall, does this refresh your recollection that at least as of Monday morning, you're aware of the issue of 45 versus 45.5 billion?

MR. TECCE: Objection to form.

A. Yeah, as I mentioned, I wasn't sure when I first heard it floating around. But yes, obviously -- he listed -- Mike Fazio, my partner, lists for me four items that should go

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into the reconciliation that I mentioned at the end of my e-mail to the committee.

Q. What do you mean by a reconciliation?

A. Well, those are the words we use internally. We thought this was merely -- reconciling the data to you know what occurred and getting information from -- I am going to say from Barclays, but Barclays controlled the Lehman data as well. So getting information from Barclays either in its capacity as Barclays or in its capacity as running the Lehman systems to prove up against what we were told was the closing, what happened, so we could put this transaction to bed.

Q. And what is your best recollection of where you learned that the number was or might be 45 billion as opposed to 45.5 billion?

A. As I said to you before, the only time I heard definitively it was 45 was when I read the JPM Barclays SIPA trustee settlement papers.

Q. Where did you first hear that it might be? Presumably the reading of the trustee papers, that was much later than September 22?

A. So your question is when did I first

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hear whether there was an issue of 45, 5 versus 45?

Q. Yeah, where did you learn it not when?

A. You asked me that before. I told you I wasn't sure when.

Q. It is not when, it is where did you learn it from?

A. I don't have a firm recollection on that.

Q. Do you think it was someone told you over the weekend or was it prior to the weekend?

MR. MILLS: Object to form.

MR. TECCE: Objection to form.

A. Do you have my notes? It could be -- I don't want to guess. I don't recall. It could have been that when people were describing the deal someone was at 45, someone said 45.5 and we noted the difference. It could be Mike Fazio noted it. I don't remember.

Q. In addition to that item, the second item here is, listed as an open item is fair market value of the 53 billion gross amount, do you see that?

A. Yes.

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Q. So your testimony is that as of Sunday night, you did not know that Lehman's book value of securities being transferred, was greater than 45 billion?

MR. MILLS: Objection to form.

MR. TECCE: Objection to form.

A. I did not know that.

Q. Did you believe that to be the case?

A. Again, I believed that at some point prior to Friday, there was a bunch of assets that may or may not go to Barclays that was 50 billion in value.

I had no understanding -- actually, that's not fair. I assumed that when the debtor and Barclays tell me that the fair market value of these assets that they have agreed upon in good faith, yada, yada, is 44, 45 billion, if the books were going to be marked that night, they would have been marked at 44 or 45 billion. It is -- you are asking me a question that I don't see the distinction between the two.

Q. In a situation where the books, because of the chaos of the week, had not been updated and parties both thought the fair market

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value of the assets was lower than was on the books, and arrived at a valuation, what they thought the fair market value was, about 45 billion dollars, what would you consider to be the book value as you used that term? Would it be what is the stale marks, stale marks on the books or what the parties believe was the fair market value?

MR. TECCE: Objection to form.

You can answer the question.

MR. GREEN: Join in the objection.

A. So long as the parties agreed to that number in a manner consistent with the way book value for a broker/dealer is done, then I would have thought that was the right -- that was the book value upon the closing should have been.

We have no objection whatsoever to Barclays saying this asset is booked too high because we think the discounted rate should be X, Y and Z, you guys did it this way, because in a manner consistent with the way broker/dealers do their jobs, if you have an illiquid asset, you do your best guess on the assumptions and if people want to discuss them, that's a fair

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discussion and we will work according to negotiation, I want the fair value of the book on the asset and, frankly, reasonable people can disagree.

But that's in the context of what is the value of that asset for the purposes of a broker/dealer operating as a going concern, you know, dealing with their book.

It is not golly, gee, whiz, we don't care what the numbers are, we get a 5 billion discount, nor is it that you change the rules of the game and say, by the way, make believe you are selling 50 billion in assets in three or four days.

Those are both inconsistent with -- so the party, to answer your question completely and fairly, if the parties modified value in a manner consistent with the way Lehman books were done, then that would be OK.

Q. And when you say consistent with the way Lehman books were done, you mean consistent with the process by marking to market? You don't mean what values happen to be written on the books somewhere?

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A. Right. I'll even go further, if they have an asset that there is no market for that, they use a discounted cash flow basis and say the cash flow is worth 10 every year and the discount rate was 12 and Barclays said, you know, our aren't the cash flows 9 and wouldn't a better discount rate be 14?

That discussion is consistent with the way you mark the book. That's the conversation a good broker/dealer would be having internally when they discuss marking their books and someone intelligent looks at them and says golly, gee, whiz, are you sure that's right, don't you think it should be X, Y or Z and the numbers moved a million here, a million there, that's to be expected.

Q. So if the reduction in value was the result of good faith efforts to value those assets consistent with industry standards, you would have no problem with that?

MR. TECCE: Objection to form.

A. That's not what I said. If there were in good faith efforts to value them as a broker/dealer would value its book as a going

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<p>1 BURIAN</p> <p>2 concern, then the answer is yes and I admit that</p> <p>3 there could be differences.</p> <p>4 But that's where we had the problem</p> <p>5 before. That doesn't mean fair market value is</p> <p>6 different. It is not that they agree different.</p> <p>7 They agree on what is fair market value for that</p> <p>8 purpose in that context. And that's what the</p> <p>9 deal was, good faith book value.</p> <p>10 Q. Your third point there says, "Verify</p> <p>11 no exchange-traded options or other positions</p> <p>12 were transferred." Do you know what that's</p> <p>13 referring to?</p> <p>14 A. That's what we talked about before. I</p> <p>15 wasn't very involved on this point, but I</p> <p>16 understand that exchange-traded derivative</p> <p>17 positions were not supposed to be transferred.</p> <p>18 Q. What was the basis of that</p> <p>19 understanding?</p> <p>20 A. Again, you asked me that before, I</p> <p>21 told you I don't remember the specific basis.</p> <p>22 Q. Do you recall exchange traded</p> <p>23 derivatives expressly being included in both the</p> <p>24 original APA and the purchase agreement --</p> <p>25 A. I'm happy --</p>	<p>1 BURIAN</p> <p>2 MR. TECCE: Objection to the form of</p> <p>3 the question.</p> <p>4 A. I said to you before, if you want to</p> <p>5 play a guessing game, I'll guess. If you want</p> <p>6 me to look at the APA or clarification letter, I</p> <p>7 don't mind.</p> <p>8 My best recollection sitting here</p> <p>9 today is they are not supposed to be included,</p> <p>10 but I don't have a firm recollection.</p> <p>11 Q. I think I have forgotten where it is.</p> <p>12 Let me go ahead and show you a</p> <p>13 document that we will mark as 764. -- no, let's</p> <p>14 use -- let me show you a document marked as</p> <p>15 Exhibit 764.</p> <p>16 A. Well, I guess Mr. O'Donnell did</p> <p>17 forward my e-mail.</p> <p>18 (Exhibit 764, e-mail dated December 5,</p> <p>19 2008 marked for identification, as of this</p> <p>20 date.)</p> <p>21 Q. I didn't have do ask the question, we</p> <p>22 already confirmed the first point?</p> <p>23 A. No, you asked me before.</p> <p>24 Q. This is exhibit 764 an is an e-mail</p> <p>25 dated December 5, 2008, 1:36 p.m. And attached</p>
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<p>1 BURIAN</p> <p>2 to it --</p> <p>3 MR. TECCE: Well, that's the date at</p> <p>4 the top, but if you want to look -- the date</p> <p>5 of the e-mail --</p> <p>6 MR. THOMAS: Sure. It's forwarding an</p> <p>7 e-mail dated September 22, 2008.</p> <p>8 MR. TECCE: Thank you.</p> <p>9 Q. Do you see that?</p> <p>10 A. Are you asking me?</p> <p>11 Q. Yes.</p> <p>12 A. Yes, sorry. I guess you are always</p> <p>13 asking me.</p> <p>14 Q. And do you recognize the attachment to</p> <p>15 this e-mail chain?</p> <p>16 A. I know what it purports to be. I know</p> <p>17 it is a clarification letter. I can't tell you</p> <p>18 whether this is the right version stapled here,</p> <p>19 but yeah, it is supposed to be the clarification</p> <p>20 letter.</p> <p>21 Q. And if you would look --</p> <p>22 A. It is unsigned though. If you look at</p> <p>23 the last page, it is unsigned.</p> <p>24 Q. I will -- if there is a difference in</p> <p>25 language I'm not going to ask you about, you can</p>	<p>1 BURIAN</p> <p>2 reserve your rights to amend your answer or we</p> <p>3 can get a signed one later.</p> <p>4 Let me ask you to look please at Bates</p> <p>5 number page MPMH 0013443, first page of the</p> <p>6 clarification letter, do you see that section</p> <p>7 entitled, "purchased assets, excluded assets"?</p> <p>8 A. I do.</p> <p>9 Q. Do you see the first purchased asset,</p> <p>10 there is all of the assets of the seller used</p> <p>11 primarily in the business or necessary for the</p> <p>12 operation of the business?</p> <p>13 A. I do.</p> <p>14 Q. Unless -- I'm skipping some words,</p> <p>15 except as ordinary specifically provided in the</p> <p>16 agreement or in this letter? And then if you</p> <p>17 look please at subsection A(ii).</p> <p>18 A. Yeah.</p> <p>19 Q. And would you take a moment to read</p> <p>20 through that please.</p> <p>21 A. There are two A(ii)s. Do you mean the</p> <p>22 A(ii) within paragraph A or --</p> <p>23 Q. That's a good point, starts on the</p> <p>24 first page of the clarification letter. It is</p> <p>25 section 1A(ii)?</p>



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<p>1 BURIAN</p> <p>2 Q. Generally?</p> <p>3 A. Yes.</p> <p>4 Q. So did you do any analysis of that</p> <p>5 schedule A that you received? You personally at</p> <p>6 this time?</p> <p>7 A. No.</p> <p>8 Q. Do you know if Houlihan did?</p> <p>9 A. Analysis is a stretch, but yes, we</p> <p>10 looked at it and --</p> <p>11 Q. Let me show you a document we will</p> <p>12 mark as 776 --767.</p> <p>13 (Exhibit 767, e-mail marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q. Do you recognize this e-mail chain</p> <p>16 that at least part of which you were on?</p> <p>17 A. I see what it is. I don't remember</p> <p>18 specifically having seen it before.</p> <p>19 Q. The e-mail from Mr. Bell to you,</p> <p>20 Michael Fazio and Tanja Alto, does she work with</p> <p>21 Houlihan?</p> <p>22 A. She works at Barclays.</p> <p>23 Q. It says, "Attached please find</p> <p>24 schedule B referred to in the clarification</p> <p>25 letter." Do you see that?</p>	<p>1 BURIAN</p> <p>2 A. I do.</p> <p>3 Q. Did you receive schedule B, did</p> <p>4 Houlihan receive schedule B of the securities?</p> <p>5 A. Yes.</p> <p>6 Q. At least as much --</p> <p>7 A. We received schedule B to the</p> <p>8 clarification letter.</p> <p>9 Q. And you had seen drafts of schedule</p> <p>10 the A and B on Sunday at Weil, correct?</p> <p>11 A. I'm not so sure we saw schedule B. I</p> <p>12 honestly don't remember. I don't know. And I'm</p> <p>13 not sure we saw a draft of schedule A. What we</p> <p>14 saw was on Sunday, what turned out to be</p> <p>15 identical to schedule A, but what was</p> <p>16 represented at the time as not a draft of the</p> <p>17 attachment. It was a list of assets that people</p> <p>18 thought might be in the repo as of a date they</p> <p>19 had described.</p> <p>20 Q. Let me show you a document we will</p> <p>21 mark as 768. And at the top, it is coming in</p> <p>22 Michael Livanos, do they work with Houlihan?</p> <p>23 (Exhibit 768, e-mail marked for</p> <p>24 identification, as of this date.)</p> <p>25 A. He works with Houlihan.</p>
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<p>1 BURIAN</p> <p>2 Q. And when he says, "Got it. Taking a</p> <p>3 look at it now." Do you know what that's</p> <p>4 referring to?</p> <p>5 A. Just from the e-mail, it looks like he</p> <p>6 has a copy of the schedule A. And that he is</p> <p>7 taking a look at it.</p> <p>8 Q. And what is Mr. Livanos' background?</p> <p>9 A. He is an associate at Houlihan Lokey.</p> <p>10 Q. Do you know what he was doing with it,</p> <p>11 beyond taking a look at it?</p> <p>12 A. Yeah, we wanted to see what was</p> <p>13 transferred, how it changed from what we had</p> <p>14 been given. That was part of our diligence of</p> <p>15 what happened in the closing.</p> <p>16 Q. Were you part of -- did you personally</p> <p>17 work on any of the analyses or efforts to value</p> <p>18 the securities that were transferred as far as</p> <p>19 the Barclays sale transaction?</p> <p>20 MR. TECCE: Objection, form.</p> <p>21 A. They were done at my direction. But I</p> <p>22 didn't personally look things up on Bloomberg.</p> <p>23 Q. Did you -- were you copied with the</p> <p>24 results?</p> <p>25 A. I don't -- I've seen them, I don't</p>	<p>1 BURIAN</p> <p>2 remember if I was copied on particular e-mails.</p> <p>3 Q. Who were the people running that,</p> <p>4 those efforts to try to value the securities</p> <p>5 that were transferred?</p> <p>6 A. No one was trying to value the</p> <p>7 securities that were transferred. We didn't</p> <p>8 really have a feel for exactly what securities</p> <p>9 were transferred. We did look at the schedule A</p> <p>10 that we received, the shorthand, I am calling it</p> <p>11 schedule A on Sunday, and we did have Mike stay</p> <p>12 up all night trying to figure out what he can</p> <p>13 get quotes on and immediate supervision, was,</p> <p>14 you know, through the chain and Miller, Tanja</p> <p>15 Alto, Mike Fazio and Brad Geer, but I already</p> <p>16 told you what the result was. G-E-E-R. I told</p> <p>17 you what the results of that analysis was.</p> <p>18 Q. You said you didn't have a feel for</p> <p>19 what securities were transferred. Didn't you</p> <p>20 have a list of securities that were transferred?</p> <p>21 A. We are going over this again. As of</p> <p>22 what date?</p> <p>23 Q. Well, you had a list of certainly most</p> <p>24 of the securities that were being transferred</p> <p>25 prior to closing, right?</p>

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MR. TECCE: Objection to form.

A. I wasn't sure of that, no. I had a list of securities as of an uncertain date with uncertain value in a tumultuous environment where everyone is yelling and screaming that people aren't sending things over, things aren't there, should be there, you have junior people from Lehman running down to DTC to check if the securities were there and we had a list that people told us not rely on.

We took it seriously and tried to parse what those securities were listed at to the extent we can get market information. But if you are asking me did we try to take a look at what the market value of the public securities on the schedule that we got on Sunday were, yes. If you ask me did we try to value securities that were being transferred, the answer is we didn't know.

Q. My question really, is it your testimony that you didn't even have a feel for which securities were being transferred?

MR. TECCE: Objection, form.

A. We assumed it was some subset of what

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was given to us on Sunday, plus or minus what could be a material amount.

Q. But still, the vast majority, you understood that the vast majority of securities that were being transferred to Barclays were on the list you were provided with Sunday, right?

A. I made that assumption, but it could have been right, it could have been wrong and, frankly, when we heard the explanation about the market movement and how the assets were affected by the market, we had our doubts because so many of the assets were -- had not deteriorated in the market and, frankly, had moved up a little bit that the whole thing was quite confusing.

Q. As you sit here today, you don't know whether most of the securities had transferred to Barclays were, in fact, on the list you were provided with as of Sunday before closing?

A. I've been told that most of those assets -- that represents a significant portion of the assets that were transferred to Barclays.

Q. And more than a significant portion. Most, virtually all of the assets transferred to Barclays, securities transferred to Barclays

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were on the list, apart from the clearance box securities, were on the list provided to you on Sunday, correct?

MR. MILLS: Object to the form.

A. I don't know that for a fact.

Q. Do you believe that to be the case?

A. I don't know.

Q. So you think people may have given you the wrong list of securities back in September of 2008?

A. I think that people gave me a list that I was told was inaccurate, incomplete, and wrong. There was a lot of yelling and screaming about securities moving all over the place and then, lo and behold, I get the exact, identical list five or six days later, no changes.

Yes, I was very suspicious if that list was accurate.

Q. So what you are saying is because the list, the final list filed with the Court was the same as the list that you were shown on Sunday, that causes you to be suspicious about whether the Sunday list was accurate?

MR. TECCE: Objection to form.

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A. I wasn't going to choose which was which. I had no reason to doubt that a Sunday list was a list of securities off the Lehman system. I was surprised that the identical list was filed, whenever that was, Wednesday, Thursday, whenever it was filed, and that caused us to ask questions.

Q. Doesn't that just mean they gave you an accurate list on Sunday?

A. And that they lied to us on Sunday? Which I --

Q. What's your basis for saying that?

A. Because on Sunday, we were told that the assets were moving around because it had a 50 billion asset, we were told it was 44, 45. Yes, one plausible explanation this is a list of the assets, but the marks were from earlier in the week and that all the transfers among and all the yelling and screaming with JP Morgan and DTC amounted to zero changes in the assets from Sunday to Thursday. That could be. It didn't sound right to me, but it could be.

Q. Do you have any basis for believing that the list you were given Sunday and the list

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that was filed with the Court is not an accurate reflection of the securities that were actually transferred to Barclays?

A. I would be happy to take your representation if you are willing to put your credibility on it. We have not found anyone who is willing to stand up and say this is what we got. I don't have a complete list of the assets and how they were marked that went across.

Q. When did you first come to believe that anyone at Lehman or Weil or Barclays was lying to you?

A. I actually -- there is one regret I have in this transaction is I was naive in that I never seriously -- I did not seriously consider that we were directly misrepresented to until very late in the game.

Q. When is late in the game approximately?

A. When the results started coming in for the 2004. I was always firmly in the camp of this is a reconciliation that had plausible explanations. Junior people would write a report, I would look at it, and the committee

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There may be other issues obviously.

Q. Are there other issues? If that were demonstrated to you, would you be satisfied that the deal that went forward was appropriate?

MR. TECCE: Objection to form.

A. Again, there are a number of issues. And we are dealing with hypothetical that appears not to be the case based on Jim Seery's deposition and based on -- affidavit, I'm sorry, and based on what has been uncovered about a 5 billion dollar negotiated discount from the start.

But what I expected to happen was a good faith analysis consistent with how a going concern broker/dealer would have done it as to what the values are. If the values would have been off by a little here and there because people had concerns about particular assets, that would not have surprised me that the numbers would have moved from 50 billion to some number north or south of that. And I would have thought that was consistent with what the judge was told.

Q. Other than the valuation issue that

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would be happy.

Never -- well, I started to worry when I read the JPM settlement documents. I started to worry then and I was very worried in February when I particularly asked Lindsay Granfield and asked counsel for Barclays and we had the conference calls and said guys, just write the report for me. I am just trying to write a report and be done. Tell me what securities went, when they went, and from whom they went and I'll go away. And when I got obfuscation back, I started -- I must be -- maybe even before the 2004, I started to get concerned.

Q. If it were demonstrated to your satisfaction that a reasonable value, a reasonable market valuation of the repo collateral was indeed in the 45 billion dollar range, would you then be satisfied?

A. In a manner consistent with how Lehman broker/dealer would have marked their books as a going concern?

Q. Yes.

A. I think that that fact would have been consistent with a representation we received.

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you have identified, is there any other thing you have a problem with concerning how the deal was finalized, closed?

MR. TECCE: Objection to form.

A. I'm not the repository of every issue. I think that we -- there is ambiguity about you want -- yes, if you want -- if, in fact, it is true that we didn't get back the regulated capital but nevertheless, Barclays still wants 763 of securities, I'd have a problem with that. That was never the context of the deal.

If, in fact, there were assets that were transferred that were at LBHI, or belonged to LBHI, I'd want them back. In, if fact, there were exchange-traded options, the stuff Mike is concerned about. But, you know, all this would be known when we get the list.

MR. THOMAS: We can switch the tape.

THE VIDEOGRAPHER: Going off the record, the time is 8:45.

(Recess)

THE VIDEOGRAPHER: Back on the record, the time is 8:49 p.m. We are beginning of the tape labeled 3.

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<p>1 BURIAN</p> <p>2 Q. Let me show you the document marked as</p> <p>3 769, and the top of it is an e-mail from Brad</p> <p>4 Geer to Michael Fazio and Bell, Crayton and I</p> <p>5 would like to ask you about one of the</p> <p>6 attachments. First of all, do you recognize</p> <p>7 what the first attachment is?</p> <p>8 (Exhibit 769, e-mail marked for</p> <p>9 identification, as of this date.)</p> <p>10 A. I do.</p> <p>11 Q. Would you describe what it is, please?</p> <p>12 A. It is a summary of what we have been</p> <p>13 referring to as schedule A.</p> <p>14 Q. What do you understand to be reflected</p> <p>15 on schedule A?</p> <p>16 A. A summary by security type of the</p> <p>17 securities and the book value of the repo</p> <p>18 collateral.</p> <p>19 Q. And the next document, next attachment</p> <p>20 at the top, it says, "LBI sale, value of assets</p> <p>21 transferred to Barclays." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recognize this document?</p> <p>24 A. I do.</p> <p>25 Q. And you have had a chance to review it</p>	<p>1 BURIAN</p> <p>2 in the last couple of days?</p> <p>3 A. Yes.</p> <p>4 Q. And would you describe what the</p> <p>5 document is, please?</p> <p>6 A. It's a draft summary which is a -- of</p> <p>7 input from a variety of people into some of our</p> <p>8 concerns that we want to investigate in the</p> <p>9 Barclays sale.</p> <p>10 Q. And about halfway down, it says, the</p> <p>11 components of value that were transferred to</p> <p>12 Barclays are as follows, excluding buildings --</p> <p>13 excuse me. First one is schedule A assets. And</p> <p>14 do you understand that to be essentially the</p> <p>15 repo collateral securities that were actually</p> <p>16 transferred to Barclays?</p> <p>17 MR. TECCE: Objection to form.</p> <p>18 A. Again, is what they told us was being</p> <p>19 schedule A, but yeah, it is -- the 4307 foots to</p> <p>20 the 43069 on the previous page.</p> <p>21 Q. Column lines, "Approx collateral</p> <p>22 released from JPM, 7 billion dollars," is that</p> <p>23 broken out separately because of the whole JPM</p> <p>24 issue and securities that didn't go to Barclays</p> <p>25 and eventually --</p>
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<p>1 BURIAN</p> <p>2 A. It is broken out separately because</p> <p>3 the face amount was supposed to be 50 million --</p> <p>4 50 billion and the schedule on that list</p> <p>5 included 7 billion of cash which, you know, I'm</p> <p>6 not sure why he broke it out this way, but it is</p> <p>7 7 billion of cash assets that either was</p> <p>8 supposed to go or did go but never actually made</p> <p>9 it to Barclays.</p> <p>10 Q. Do you know whose cash that was, the 7</p> <p>11 billion?</p> <p>12 A. I am not getting involved in that one.</p> <p>13 Q. So if you get back to the -- we are</p> <p>14 talking about, the issue was the repo collateral</p> <p>15 50 billion or versus 45 billion, you have to add</p> <p>16 the 7 back into the 43 to get back to apples to</p> <p>17 apples?</p> <p>18 A. Correct, correct.</p> <p>19 Q. So we are talking about repo</p> <p>20 collateral of about 50 billion and then</p> <p>21 miscellaneous securities in the box at</p> <p>22 transaction date, those are the clearance box</p> <p>23 securities?</p> <p>24 MR. MILLS: Object to the form.</p> <p>25 A. Correct. To correct a previous answer</p>	<p>1 BURIAN</p> <p>2 here, you see Brad using 53 billion dollar which</p> <p>3 foots to Mike Fazio's number from a previous</p> <p>4 question where I thought it might be including</p> <p>5 the RESIs. We had two possibilities of what it</p> <p>6 meant. This is just support for the fact that</p> <p>7 he is referring to your interpretation which is</p> <p>8 the face amount plus the box assets.</p> <p>9 Q. And the reserves related to customer</p> <p>10 accounts, that's the 15c3 assets, the 763</p> <p>11 million in securities?</p> <p>12 A. Yeah, rounded up to 800,000.</p> <p>13 Q. Million? 800 million, right?</p> <p>14 A. 800 million. Sorry. I'm tired.</p> <p>15 Q. So that totals to 52.8 billion?</p> <p>16 A. Right.</p> <p>17 Q. What was the 50 billion -- and call it</p> <p>18 50 billion because I am adding the 7 billion</p> <p>19 back to the 43 billion. You will understand</p> <p>20 what I am referring to?</p> <p>21 A. Yup.</p> <p>22 Q. And what was that value based upon?</p> <p>23 How did you get the 50 billion?</p> <p>24 A. This is just write-off -- we saved a</p> <p>25 copy of the schedule A we had received on Sunday</p>



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<p>1 BURIAN</p> <p>2 and this is right off the Lehman marks.</p> <p>3 Q. The 50 billion in Lehman marks minus a</p> <p>4 schedule A haircut, is that right?</p> <p>5 A. Correct, that's what it says.</p> <p>6 MR. TECCE: Actually, can you tell him</p> <p>7 where you are getting 50 from in this box?</p> <p>8 A. 43.07 plus the 7 billion in cash is</p> <p>9 50.07.</p> <p>10 MR. TECCE: Sorry.</p> <p>11 Q. And by -- what is meant by -- let me</p> <p>12 ask you -- do you know who prepared this</p> <p>13 document?</p> <p>14 A. Again, this is a compilation, this</p> <p>15 insert to this document was prepared by Brad</p> <p>16 Geer, I believe, to the best of my knowledge.</p> <p>17 Q. And is this something that you</p> <p>18 reviewed at the time?</p> <p>19 A. I did not review at the time this</p> <p>20 insertion that went to Crayton Bell.</p> <p>21 Q. In terms of the attachment that's</p> <p>22 entitled "LBI sale," the two-page value of</p> <p>23 assets transferred to Barclays' document?</p> <p>24 A. At some point, I saw this. I did not</p> <p>25 see this at the time that it was -- Brad made</p>	<p>1 BURIAN</p> <p>2 his comments. My understanding is Crayton</p> <p>3 wanted help in understanding what the issues</p> <p>4 were, Brad filled in some details, sent it back</p> <p>5 to Crayton, and in the ordinary course, Evan</p> <p>6 Flack or Dennis O'Donnell or somebody from</p> <p>7 Milbank, maybe Crayton, would clean it up and</p> <p>8 would send it to me for my thoughts.</p> <p>9 Q. And does this incorporate your</p> <p>10 thoughts?</p> <p>11 A. This draft, this draft never went</p> <p>12 anywhere. So do I disagree with the math we</p> <p>13 just went through? No.</p> <p>14 Q. What was the purpose of the draft?</p> <p>15 A. To crystallize for Milbank -- this is</p> <p>16 dated October 10. On October 8, we received a</p> <p>17 presentation from Alvarez &amp; Marsal that included</p> <p>18 a brief, one-page summary of a transaction that</p> <p>19 had a line that said 5 billion dollar discount</p> <p>20 to reflect our daily marks or something like</p> <p>21 that. There was an out -- there was a value</p> <p>22 reduction and they reflected the marks. We</p> <p>23 were --</p> <p>24 Q. You already knew about that issue?</p> <p>25 A. No.</p>
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<p>1 BURIAN</p> <p>2 MR. TECCE: Objection to form.</p> <p>3 A. We were surprised to see it presented</p> <p>4 that way by A&amp;M. We knew that there was a 45</p> <p>5 billion dollars securities supposed to be</p> <p>6 transferred. We knew that basically some old</p> <p>7 marks that were no longer relevant, the</p> <p>8 difference was 5 billion. We had never seen it</p> <p>9 presented that way that the Lehman books on that</p> <p>10 day were 50 billion and someone reduced it by</p> <p>11 some negotiated discount by 5 billion.</p> <p>12 We weren't that -- we were concerned</p> <p>13 but not that concerned because the language said</p> <p>14 in the thing, on the page to reflect stale</p> <p>15 marks. That was sort of consistent with Weil</p> <p>16 with what we were represented the night before</p> <p>17 the closing.</p> <p>18 Q. Had you previously assumed that the</p> <p>19 Lehman marks of 50 billion were from some prior</p> <p>20 day?</p> <p>21 A. Yes, we were told ignore them, they're</p> <p>22 stale. So we always assumed they were old and</p> <p>23 cold.</p> <p>24 Q. Did you know what was literally on the</p> <p>25 books as of Sunday?</p>	<p>1 BURIAN</p> <p>2 A. No, we didn't look at book on Sunday.</p> <p>3 Q. Did you ask to see what was on --</p> <p>4 A. We asked to see what the final assets</p> <p>5 that went, how were they booked, what is the</p> <p>6 transfer.</p> <p>7 Q. Is that when you got the schedule A</p> <p>8 securities list?</p> <p>9 A. No. This is subsequent to -- before</p> <p>10 and subsequent to getting the schedule A list on</p> <p>11 Thursday before closing.</p> <p>12 Q. Well, put aside schedule A. Is it in</p> <p>13 response to your inquiries, were you given the</p> <p>14 list of securities which later came to equal</p> <p>15 schedule A?</p> <p>16 A. Refer back in the deposition. You</p> <p>17 have asked this. I have answered it.</p> <p>18 Q. You seemed to move a little bit?</p> <p>19 A. It is not moving.</p> <p>20 Q. Did you know on Sunday, did you think</p> <p>21 that the 50 billion Lehman marks was not the</p> <p>22 current Lehman marks, just old marks and there</p> <p>23 were new marks on the books now or did you think</p> <p>24 they were still the marks on the book and just</p> <p>25 they were outdated and you didn't have --</p>

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BURIAN

A. I didn't have a firm recollection as to whether or not this was the close of business on Wednesday, Tuesday -- Wednesday, Thursday or Friday. We suspected because of the hullabaloo about value that it must have been before that and we were told it was outdated, so if you mark it based on the fair market value as a continuing business and consistent with the way a broker/dealer would do it if it was done on Friday, there would be no reason, no discussion other than along the edges. With a 5 billion reduction, it better be pretty old.

Q. How old would it have to be to make sense in that market?

MR. TECCE: Objection form.

A. I haven't done the analysis. If you look at the page, page 2 of what you are showing me, the summary, you know -- as you know from the material we provided you, some of the agencies, Treasuries, some of this stuff we could take a look at. But a lot of these other things are indecipherable and we did not do an analysis.

Q. You are saying some of the assets and

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way it was presented. The idea that the marks were stale and people looked at these things was fine. We never heard it described as a 5 billion dollar discount and that was very disturbing.

Q. Further down, underneath your -- so you have a net total of 47.8, when you factor in the 5 billion dollar reduction, correct?

A. Correct.

Q. Further down, it says, summary, summary A at face value shows approximately 43 billion in value based on the marks in the Lehman system at the time of the transaction. Do you see that? So the 43 billion, you understood, was based upon the marks in the Lehman system at the time of the transaction?

A. No.

MR. TECCE: Objection to form.

Q. So this is inaccurate?

A. It's guessing a little bit. It's based on the last -- we never got any update in the schedule A with numbers that we got on Sunday and we never got confirmation if they had closed the books on Friday and marked them or

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BURIAN

repo collateral were very difficult to value?

A. No, I am saying they were difficult for us to value because we had no facility with them, no description with them, didn't have access to the models that we used to value them.

Q. Were you told that models were used to value them?

A. Oh, yeah, we were told that many of these were private securities that they used Excel spreadsheets or other formulas for valuing them.

Q. So you had -- what is -- it says schedule A haircut. Can you explain what that is?

A. The difference between the 50 billion and 45 billion.

Q. And --

A. Or in this case, the 53 billion and 47, 48 billion.

Q. So the new information you learned from the Alvarez presentation on October 8 was what?

MR. TECCE: Objection to form.

A. It wasn't new. It was disturbing the

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BURIAN

not. We suspected they didn't. We didn't know if it was done on Tuesday, Wednesday or Thursday.

So the assumption was, since we never got anything, this is the last there was and then people had to make adjustments on the fly. It was not -- Brad couldn't have known this for a fact. This is supposition.

Q. How do you know he couldn't have known this?

A. Because I've asked him. I've discussed this. I was involved. He would have told me.

Q. So you think he is just making an assumption here that he shouldn't have made?

A. I think this is an internal crib sheet. It never went anywhere and I think a more accurate way of saying it is, this is the value in the last presentation or run that we got from Lehman as opposed to saying this was the Lehman marks.

Q. You don't know one way or another whether the marks were -- that run was current or from --

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<p>1 BURIAN</p> <p>2 which is what we have been going around and</p> <p>3 saying.</p> <p>4 Q. Was it your understanding that when it</p> <p>5 says the amount that was agreed to between</p> <p>6 Lehman and Barclays, was it your understanding</p> <p>7 that that was an agreed amount that they came up</p> <p>8 with?</p> <p>9 A. Mike Klein specifically told me that</p> <p>10 the value was between 44 and 45 and they agreed</p> <p>11 to round it up to 45.</p> <p>12 Q. So there was, Barclays was thinking it</p> <p>13 was worth 44 or 45 and then Lehman was</p> <p>14 thinking -- do you know what Lehman's thinking</p> <p>15 was?</p> <p>16 MR. TECCE: Objection to form.</p> <p>17 A. I wasn't given a blow-by-blow of what</p> <p>18 it was. I was told that it -- they looked at it</p> <p>19 and whether there was room for dispute, Barclays</p> <p>20 was going to be charitable and round it up.</p> <p>21 Q. So the number, your understanding is</p> <p>22 the number that the parties treated as value of</p> <p>23 the assets was something that was agreed to?</p> <p>24 MR. TECCE: Objection to form.</p> <p>25 A. Again, I don't know if you are</p>	<p>1 BURIAN</p> <p>2 attaching meaning to the word "agreed to" by</p> <p>3 asking me it three times, but it is the same</p> <p>4 answer.</p> <p>5 Q. That's yes?</p> <p>6 A. I was told that this was a number</p> <p>7 rounded up from Barclays' view of fair market</p> <p>8 value that Lehman agreed to.</p> <p>9 Q. And that was your understanding at the</p> <p>10 time of the deal also, correct?</p> <p>11 A. We are talking about Sunday night,</p> <p>12 right?</p> <p>13 Q. Yes.</p> <p>14 A. So my understanding was that the</p> <p>15 parties in good faith looked at the assets in a</p> <p>16 manner consistent with how a broker/dealer would</p> <p>17 do, all of which turned out to be false, but</p> <p>18 that was my understanding at the time, and</p> <p>19 concluded that a range of 44 to 45 was fair and</p> <p>20 that they were going to treat it at 45.</p> <p>21 Q. OK, skipping a couple of sentences,</p> <p>22 "Those we have looked at seem to suggest they</p> <p>23 are worth more than implied by the negotiated</p> <p>24 mark in the deal, which amount isn't shown</p> <p>25 detailed in any schedule."</p>
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<p>1 BURIAN</p> <p>2 A. Correct.</p> <p>3 Q. That was your understanding of the</p> <p>4 situation as well?</p> <p>5 MR. TECCE: Objection to form.</p> <p>6 A. My understanding of the situation is</p> <p>7 we were not given a security-by-security</p> <p>8 analysis of how and which dropped in value and,</p> <p>9 therefore, you know, we didn't have an ability</p> <p>10 to reconcile the totals. That's what he said.</p> <p>11 Q. But as of September 28, was it also</p> <p>12 your understanding that your -- based on your</p> <p>13 review of the securities that that review</p> <p>14 suggested that the securities were worth more</p> <p>15 than the parties had agreed to treat them as?</p> <p>16 A. As I said before, based on what we</p> <p>17 were given Sunday, the analysis we quickly did</p> <p>18 in the limited time available, we were very</p> <p>19 worried, worried enough to demand an explanation</p> <p>20 and upset enough that Harvey actually said, OK,</p> <p>21 I'll get you someone to walk you through it.</p> <p>22 Then we got an explanation and we said we need</p> <p>23 to verify it. So I'm not sure what you are</p> <p>24 trying to go over again.</p> <p>25 Q. And the attempts you tried to verify</p>	<p>1 BURIAN</p> <p>2 that are referred to in the document, Exhibit</p> <p>3 770 --</p> <p>4 A. This is the same, this is the same.</p> <p>5 Q. Those attempts would suggest --</p> <p>6 A. This is the same, this is the same</p> <p>7 information that led me to the concerns that led</p> <p>8 me to make the request that got me the</p> <p>9 representations. This is September 28 -- this</p> <p>10 is a couple of days after the closing.</p> <p>11 We just got a schedule which to our</p> <p>12 surprise was identical to the other one. We</p> <p>13 said this doesn't make a lot of sense, they are</p> <p>14 telling us this, there must be something going</p> <p>15 on here, let's figure out what's going on. Hey</p> <p>16 Milbank, go figure it out. Nothing happens.</p> <p>17 We get the presentation from A&amp;M. Oh,</p> <p>18 it looks like there really could be a problem.</p> <p>19 Let's make sure, Milbank understands what we are</p> <p>20 talking about, and let's make sure they demand</p> <p>21 the information.</p> <p>22 Q. As of the date --</p> <p>23 A. We kept escalating that degree of</p> <p>24 concern as we didn't get facts that contradicted</p> <p>25 our thesis.</p>

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4  
5

6 IN RE: )  
7 LEHMAN BROTHERS HOLDINGS, ) Chapter 11  
8 INC., et al., ) Case No.  
9 ) 08-13555(JMP)  
10 Debtors. )  
11 \_\_\_\_\_ )  
12  
13  
14

15 DEPOSITION OF ERIC CLARK  
16 New York, New York  
17 Wednesday, February 24, 2010  
18  
19  
20  
21  
22  
23

24 Reported by:  
25 PATRICIA A. BIDONDE, RPR  
JOB #: 28627



1 E. Clark  
2 PROCEEDINGS  
3 (Deposition Exhibit 647, notes  
4 made by Eric Clark dated October 16,  
5 2008, marked for identification, as of  
6 this date.)

7 (Deposition Exhibit 648,  
8 declaration of Eric Clark signed on  
9 January 8, 2010, marked for  
10 identification, as of this date.)

11 (Deposition Exhibit 649, report  
12 from the former Lehman product  
13 controllers of the PNL, marked for  
14 identification, as of this date.)

15 ERIC CLARK, called as a witness,  
16 having been duly sworn by a Notary  
17 Public, was examined and testified as  
18 follows:

19 EXAMINATION BY  
20 MR. OXFORD:

21 Q. Good morning, Mr. Clark. We met  
22 off the record. My name is Neil Oxford. I'm  
23 with the law firm Hughes Hubbard & Reed, and  
24 we represent Mr. Giddens, the SIBA trustee, in  
25 this litigation.

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1 E. Clark  
2 Have you ever been deposed  
3 before?

4 A. I have not.

5 Q. Just some basic grouped rules.

6 If you can let me finish your  
7 question before you begin to answer it, it  
8 will allow Patricia to take everything down in  
9 a timely manner.

10 It will also allow Mr. Shaw to  
11 object in the unlikely event that I have an  
12 objection to a question.

13 If you don't understand any of my  
14 questions, I will be happy to try and rephrase  
15 them, but if you do answer them, I will assume  
16 that you have understood them. Is that fair?

17 A. Yes.

18 MR. SHAW: What if his  
19 understanding differs from your  
20 understanding?

21 MR. OXFORD: Then I think you'll  
22 have an objection.

23 Q. And if you would like a break at  
24 any time, please, just let me know.

25 Can you tell me, please,

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1 E. Clark  
2 Mr. Clark, what you did to prepare for this  
3 deposition?

4 A. I spoke to colleagues who were  
5 also involved with aspects of the Lehman case,  
6 so Stephen King and Lily McInerney and Hatim  
7 Banaja.

8 Q. Can you give me the spelling of  
9 the last one, please?

10 A. H-a-t-i-m, B-a-n-a-j-a.

11 Q. And did you review any documents,  
12 sir?

13 A. I -- the one we have in front of  
14 us, I reviewed that. I've seen e-mails as  
15 part of --

16 MR. SHAW: We're not going to go  
17 into what you did while you were meeting  
18 with counsel.

19 THE WITNESS: Okay.

20 MR. OXFORD: Just so the record  
21 is clear, Mr. Clark was pointing to  
22 Exhibit 647 as the document that he  
23 reviewed.

24 Q. Is that correct?

25 A. Yes.

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1 E. Clark  
2 Q. Thank you.  
3 Other than the Exhibit 647,  
4 Mr. Clark, did you review any e-mails during  
5 your preparation that refreshed your  
6 recollection about the events that are  
7 described in your declaration?

8 A. No.

9 Q. Okay. Looking at Exhibit 647,  
10 please, can you tell me what this document is,  
11 please?

12 A. These were my notes talking to  
13 how at the -- the listed options taken as  
14 parts of the acquisition were dealt with.

15 Q. I see that the notes are dated  
16 the 16th of October of 2008. Is that correct?

17 A. Yes.

18 Q. Were they created at that date?

19 A. I'm not sure I understand the  
20 question. I --

21 Q. Let me try it a different way.  
22 For what purpose did you create  
23 these notes?

24 A. Pull together the events around  
25 this issue.

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<p>1 E. Clark 2 quite wide. 3 I would think they had some. 4 They... do you mind asking your question in a 5 different format? I feel like I'd have to say 6 yes, because they would have to have some 7 knowledge of the equity markets, so they would 8 have some expertise. 9 <b>Q. Can you tell me, as best you</b> 10 <b>know, what expertise they did have?</b> 11 A. I would be speculating. 12 <b>Q. Okay. Thank you. I'm not</b> 13 <b>looking for your speculation.</b> 14 <b>To your knowledge, sir, did the</b> 15 <b>PMTG include specialists in single stock</b> 16 <b>listed options?</b> 17 A. To my knowledge, they did not 18 include specialists. 19 <b>Q. To your knowledge, sir, was there</b> 20 <b>another group within Barclays that specialized</b> 21 <b>in --</b> 22 A. There was, yes. 23 <b>Q. I just want to make sure we have</b> 24 <b>a clean record.</b> 25 <b>To your knowledge, sir, was there</b> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 E. Clark 2 <b>another group within Barclays that did</b> 3 <b>specialize in that trading and risk management</b> 4 <b>of that single stock listed options such as</b> 5 <b>those that were transferred from the Lehman</b> 6 <b>accounts 074C and 074F?</b> 7 A. It's worth making the point that 8 the size and nature of the portfolio taken on 9 would mean that we did not have people in 10 Barclays -- who, within Barclays, were doing 11 similar work. We were dealing with Barclays 12 with much smaller numbers of listed options. 13 I don't know whether they have 14 experience doing that in other firms, but they 15 wouldn't have picked that up doing it in 16 Barclays US because of different sizes of the 17 portfolios. But I would count those people as 18 experts in managing listed option equity risk. 19 <b>Q. Do you know the name of the group</b> 20 <b>you've just described, sir?</b> 21 A. Equity derivatives trading. 22 <b>Q. Do you have an understanding,</b> 23 <b>sir, of the volumes of positions that the</b> 24 <b>equity derivatives trading group at Barclays</b> 25 <b>in September of 2008 was typically handling?</b> TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 E. Clark 2 A. I don't know the answer to that 3 question, but I think it's in the high 4 hundreds, low thousands. But that number 5 could be off. 6 <b>Q. And is that a number of trades</b> 7 <b>being executed every day, sir?</b> 8 A. No. It would be a number 9 referring to trades done across positions over 10 perhaps a month. 11 <b>Q. Do you know if any individual</b> 12 <b>from the trading group you've just described</b> 13 <b>were consulted in the management of the risk</b> 14 <b>associated with owning the options described</b> 15 <b>in your memorandum?</b> 16 A. Once post-closing? Yes. I know 17 that they were consultants. 18 <b>Q. Could you give me the names of</b> 19 <b>those individuals, please, sir.</b> 20 A. Nick Moriera. I'll spell that. 21 Nick, as you expect, and then Moreira, 22 M-o-r-i-e-r-a. Thierry, T-h-i-e-r-r-y, Lucas, 23 L-u-c-a-s, and Nick Lehane, L-e-h-h-a-n-e. 24 The Thierry Lucas, I'm not sure 25 I'm spelling it right. I'd have to check. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 E. Clark 2 <b>Q. How do you know, sir, that these</b> 3 <b>people were consulted in the management of</b> 4 <b>risk you've just described?</b> 5 A. My role at the time was to do the 6 accounting for the equity derivatives desk in 7 addition to a couple of other 8 responsibilities, a couple of other trading 9 desks. 10 <b>Q. And the next bullet point, sir,</b> 11 <b>under your summary, you write: "They were</b> 12 <b>removed from the Lehman system infrastructure,</b> 13 <b>but could not be booked on the Barcap</b> 14 <b>infrastructure due to capacity constraints</b> 15 <b>(positions was in excess of 70,000 options)."</b> 16 <b>Do you see that?</b> 17 MR. SHAW: You need to answer it 18 orally. 19 A. Sorry. Repeat the question, 20 please. 21 MR. OXFORD: Could you read it 22 back, please. 23 (Record read.) 24 A. Yes. 25 <b>Q. Do you know the name, sir, of the</b> TSG Reporting - Worldwide 877-702-9580</p>

E. Clark

**Lehman system infrastructure from which the systems were removed?**

A. I can't recall.

**Q. Do you know when they were removed, sir? Was it on the 22nd?**

A. I don't know. Thereabouts, but...

**Q. Well, I think you told me earlier that the portfolio was transferred to the PMTG on the 22nd.**

**What did you mean by that, sir?**

A. Post-closing, PMTG were the owners of that portfolio, so...

**Q. Are you describing in your last answer risk transfer within various groups within Barclays?**

A. I'm not.

As part of the acquisition, Barclays became the owners of a number of assets, and PMTG were the owners.

**Q. Okay. So let's back up.**

**You -- can you tell me what you mean by, "At acquisition, the portfolio was transferred to PMTG"?**

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E. Clark

A. So when the transaction closed, Barclays became owners of a number of assets.

PMTG were the desk nominated to take ownership of all of those assets. And the listed options are part of those assets, so they would -- that's why I phrase it as they took over the -- they were transferred to the -- they became the owners.

**Q. You go on to say that the positions "couldn't be booked on the Barcap infrastructure due to capacity constraints."**

**What do you mean by that, sir?**

A. The Barclays system would not support that number of this type of product. It was not designed to do so.

**Q. And when, to your knowledge, sir, did Barclays first become aware of that?**

MR. SHAW: Objection. Calls for speculation. Foundation.

You can answer if you know.

A. I don't know the answer to that question, but it would have been very close to after closing.

**Q. Do you know what the capacity was**

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E. Clark

**of the Barcap infrastructure?**

A. I do not know.

**Q. The next bullet of your summary, sir, says, "Barcap executed S&P index futures and options as hedges against the portfolio."**

**Do you see that?**

A. I do, yes.

**Q. When did Barcap execute those hedges?**

A. In the days following the closing.

**Q. Can you be more specific?**

A. In the two days following closing, but then some of them, I think, would have been done after that.

**Q. Who within Barclays, sir, would have the most knowledge about when those hedges described in your third bullet were executed?**

A. That information would be available from the system that we have, so it would be accessible by a number of people.

You say "most knowledge." That's not quite the right -- there were a number of

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E. Clark

different people who could get it.

**Q. What is the name of the system, sir, that you would access to if you did not have permission?**

A. It's called Sophis, S-o-p-h-i-s. That's the Barclays equities risk system.

**Q. So, sir, if you wanted to know when the hedges you describe in bullet point 3 were executed, you or someone on your behalf would be able to create a Sophis system?**

A. Yes.

**Q. Would that be a difficult thing to do?**

A. I'm not sure of the record-keeping, but I would not think so.

**Q. Do you know who at Barclays would be responsible for executing those hedges?**

A. The three gentlemen I mentioned: The two Nicks and Thierry, probably most of the people that were doing it. There may be others on the equity desk. But it would be mainly them.

**Q. Do you have any knowledge, sir, of why Barclays did not put on stock-specific**

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E. Clark

A. I would have spoken to the two individuals, Lily and Hatim, who I mentioned at first.

**Q. Millie's last name is?**

A. Lily. Lily McInerney, who was the first person, and Hatim. They worked for Lehman. I spoke to them.

I can't recall anyone else.

There were -- there were conversations.

**Q. Would you agree with me that Barclays, either as of the close or shortly after the close of this deal, had enough information to place at least the S&P index hedges that they placed?**

MR. SHAW: Objection to form.

A. I think the basis that they made the decision to execute those trades was based on their broad assumptions about that portfolio. They lacked the knowledge they would want.

But I think there was -- the trading decisions would have been made on a mixture of what they were aware of about the portfolio and also their assumptions around

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E. Clark

what sort of -- what that portfolio was likely to contain, given the nature of Lehman's business, and also, I would say, their appetite to market risk, their feeling around the market at the time.

So I think it's a combination of those -- it's a combination of those things.

**Q. If Lehman, sir, had -- withdrawn.**

**If Barclays had a list of the individual options positions that it was acquiring from OCC prior to the close, do you believe Barclays was in a position to adequately hedge that risk?**

MR. SHAW: Objection to form.

That question got garbled in the middle of it.

**Q. Sir, if Barclays, prior to the closing of the transaction, had a list of the equity options that it was acquiring from Lehman, do you believe that Barclays had enough information to hedge any risk associated with the ownership of those options?**

MR. SHAW: Objection to form.

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E. Clark

You can answer if you know.

A. If they had it.

And the information -- you're saying if they had a list of the options, they -- it would not.

These are -- these are complex positions which you need to have in a computer system in order to see how they move when the market moves, so I -- really, a list of the options as the broad economic details of the transactions, it would have been helpful.

But without them on a system, it would not have been close to being able to fully hedge them.

**Q. Okay. Are you aware, sir, whether or not Barclays acquired the Lehman system infrastructure on which these options were managed while at Lehman?**

A. They did acquire that infrastructure.

**Q. And are you aware, sir, whether or not Lehman -- withdrawn.**

**Are you aware, sir, whether or not Barclays had transferred to them the**

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E. Clark

**Lehman employees who were responsible for managing the risk associated with carrying these options on Lehman's books?**

MR. SHAW: Objection to form.

A. I am speculating a little bit, but yes, I think they were transferred. Those employees moved across to Barclays.

**Q. Okay. Did those employees include Lily McInerney?**

A. She's a product controller and accountant, like I am, so she should not be managing the risk, and the same with Hatim.

**Q. Okay. Do you know the name of the individuals at Lehman who were responsible for managing the risk of Lehman's equity options prior to the purchase of that business by Barclays?**

A. I don't.

**Q. Okay. Now, your fourth bullet point, sir, says: The "positions were booked back on to the Lehman infrastructure on October 2nd."**

**Do you see that?**

A. Yes.

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1 E. Clark  
2 Q. And how is it you know the  
3 positions were booked back on that  
4 infrastructure?  
5 A. Conversations at the time with  
6 the people who were managing that process.  
7 Q. Okay. And who were those people?  
8 A. Lily and Hatim, again, would have  
9 been involved. They would not have been doing  
10 the actual booking, and I don't remember the  
11 names of the people who were physically  
12 getting them back in.  
13 Q. Do you know, Mr. Clark, who was  
14 responsible for the decision to rebook these  
15 positions to the Lehman infrastructure on  
16 October 2nd?  
17 A. Stephen King.  
18 Q. Do you know, sir, whether or not  
19 between the time when the positions were  
20 removed from the Lehman infrastructure -- I  
21 think you said shortly after the closing and  
22 October 2 -- whether these positions were  
23 booked in any computer system or  
24 infrastructure?  
25 A. My understanding, they were not  
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1 E. Clark  
2 booked in any computer system.  
3 Q. Okay. Do you have any  
4 understanding, sir, of why they were not  
5 booked back to the Lehman infrastructure prior  
6 to October 2nd?  
7 A. I think it's a combination of  
8 nobody had the idea for a few days, and then  
9 we needed to think whether there was a better  
10 way of doing it. And then it took a bit of  
11 time to get them back on.  
12 Q. Do you know why Mr. King made the  
13 decision to move the positions back to the  
14 Lehman infrastructure on October 2nd?  
15 MR. SHAW: Objection.  
16 Foundation.  
17 A. At the time, it was the best  
18 place for them to go, to move to somewhere  
19 where we would be able to manage the risk that  
20 they had from the situation we were in where  
21 we couldn't.  
22 Q. Then do you agree, sir, that  
23 Lehman's system infrastructure would have been  
24 the best place for them to be able to manage  
25 the risk associated with owning those  
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1 E. Clark  
2 positions between the closing of the  
3 transaction and October 2nd?  
4 MR. SHAW: Objection.  
5 Foundation.  
6 A. May I read it back, please?  
7 MR. OXFORD: Of course.  
8 A. (Reading.) I can't talk to the  
9 state of the Lehman systems for the period of  
10 time post-closing to somewhat before October  
11 the 2nd, so I would -- so I don't think I can  
12 answer that -- that question.  
13 Q. Do you have any reason to  
14 believe, sir, that there was some defect in  
15 the Lehman's systems that made it  
16 inappropriate for the transfer of those  
17 positions back to the Lehman system prior to  
18 October 2nd?  
19 MR. SHAW: Objection.  
20 Foundation.  
21 A. I'm not sure the systems were on  
22 for a few days afterwards.  
23 "Defect" depends on your  
24 definition. I don't think that would -- I'm  
25 not sure it would have been possible.  
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1 E. Clark  
2 Q. And you're not sure it would have  
3 been possible because the systems couldn't be  
4 switched on?  
5 MR. SHAW: Objection.  
6 Foundation.  
7 A. I'm not sure it would have been  
8 possible because I don't know whether they  
9 were switched on.  
10 Q. Your next bullet point, sir,  
11 reads: "PMTG desk owned the risk of the  
12 options and the related hedges from the  
13 acquisition to their transfer to the ex-Lehman  
14 traders on October 7th."  
15 Do you see that?  
16 A. I do, yes.  
17 Q. Can you explain what you mean by  
18 that, please?  
19 A. Barclays had become owners of  
20 these positions, and the PMTG desk was where  
21 those positions were held. So these positions  
22 are, indeed, other positions that were taken  
23 on.  
24 So to account for those  
25 positions, the PMTG desk would make or lose  
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1 E. Clark  
2 money based on the market movements from them.

3 **Q. The related hedges that you refer**  
4 **to in that bullet point, sir, are those the**  
5 **S&P index futures and options hedges that are**  
6 **described in bullet point 3?**

7 A. They are, yes.

8 **Q. Do they include any other hedges?**

9 A. Not to my knowledge.

10 **Q. Okay. So is the following the**  
11 **correct chronology? The OCC 74M and F**  
12 **positions were moved from the Lehman**  
13 **infrastructure in an attempt to book on the**  
14 **Barclays infrastructure sometime in the days**  
15 **immediately following the close of the**  
16 **transaction. Is that correct?**

17 A. Do you mind repeating the  
18 question, please.

19 MR. OXFORD: Could you read it  
20 back, Patricia.

21 (Record read.)

22 A. I think "moved" is not quite the  
23 right word, because the Lehman infrastructure  
24 just wasn't really there anymore. It had  
25 been, to my knowledge, switched off.

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1 E. Clark

2 **Q. Well, maybe I'm missing**  
3 **something.**

4 **But if they never left that**  
5 **Lehman infrastructure, why did they need to be**  
6 **booked on it?**

7 A. They would have been originally  
8 in ex-Lehman legacy books, so they needed to  
9 be put in new books to reflect that -- who  
10 owned them, which books they were parceled  
11 into.

12 **Q. And the options and related**  
13 **hedges, sir, were transferred to the ex-Lehman**  
14 **traders on October 7th? Is that correct?**

15 A. That's correct, yes.

16 **Q. And the ex-Lehman traders were**  
17 **now employed by Barclays?**

18 A. That's correct, yes.

19 **Q. Were these the same traders who**  
20 **managed the -- withdrawn.**

21 **Were these the same Lehman**  
22 **traders who were responsible for managing the**  
23 **risk of the same options while they were**  
24 **employed by Lehman?**

25 MR. SHAW: Objection.

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1 E. Clark

2 **But I think to your question, we**  
3 **did attempt to get them onto Barclays' systems**  
4 **for the few days following the closing.**

5 **Q. And that attempt was**  
6 **unsuccessful, sir?**

7 A. It was, yes.

8 **Q. And on October 2nd, the Lehman**  
9 **infrastructure was revived. Correct?**

10 A. By October 2.

11 **Q. Thank you.**

12 **By October 2nd, the Lehman**  
13 **infrastructure was revived. Correct?**

14 A. Yes.

15 **Q. And the same positions that had**  
16 **been removed from the Lehman infrastructure**  
17 **were rebooked on October 2nd?**

18 MR. SHAW: Objection.

19 Mischaracterizes prior testimony.

20 **Q. Is that correct, sir?**

21 A. Similar to my previous -- I don't  
22 know if "removed" is quite the right word.

23 **But they did go back onto the**  
24 **Lehman -- they were booked onto the Lehman**  
25 **infrastructure on the 2nd.**

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1 E. Clark

2 Foundation.

3 A. I'm afraid I don't know.

4 **Q. Who would know the answer to that**  
5 **question?**

6 MR. SHAW: Objection.  
7 Foundation.

8 A. I think Lily would know that.

9 **Q. Your next bullet point reads,**  
10 **sir: "PMTG agreed to pay the ex-Lehman**  
11 **options desk USD \$80 million for the cost they**  
12 **would likely incur in closing the option**  
13 **positions."**

14 **Do you see that, sir?**

15 A. I do, yes.

16 **Q. Is that a reference to the**  
17 **options positions that had been placed as**  
18 **hedges, or is it a reference to the options**  
19 **positions that Barclays had acquired from**  
20 **Lehman OCC 74M and F accounts?**

21 A. I think it would cover both, but  
22 I'm speculating somewhat.

23 **Q. Well, who would -- withdrawn.**

24 **What's the source of your**  
25 **information for this statement, sir?**

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E. Clark

A. E-mails and conversations at the time between the -- the agreement between Stephen King and the ex-Lehman listed options traders about what was necessary in order for them to take on the positions and likely costs that they would incur, both in, to your point, moving the existing hedge into a single stock hedge and also closing -- where necessary, closing the options themselves.

Q. Are you able to tell me, sir, when that agreement between PMTG and the ex-Lehman's options desk was reached?

A. I couldn't tell you the exact date now, but my guess would be sometime in the couple of days before the 2nd.

MR. SHAW: The 2nd or the 7th?  
THE WITNESS: 2nd. Thank you.

Q. Your next bullet point reads, sir: "PMTG agreed that the ex-Lehman desk would act on an agency basis for the PMTG desk to put on appropriate stock and option hedges for the portfolio as the existing hedge's underlying was the S&P index, while the underlying risks of the portfolio were the

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E. Clark

price and volatility of the individual stocks."

Do you see that, sir?

A. I do, yes.

Q. Can you explain to me what you mean by that?

A. The portfolio was -- as a single stock portfolio, there would have been risks in it that would not have been caught by the index hedges.

And, for example, the single stock delta, vega, and gamma, which are measurements of how the option valuation moves given movements in different market variables, those -- the impact of those variables would not be captured by the hedges that we had on. There would be an element of that, but in no way close to being hedged.

So to get out of the S&P hedges into the appropriate single stock hedges to have a hedge portfolio would cost money.

And the PMTG desk agreed with the single stock traders, the legacy Lehman single stock traders, that -- for a period of time --

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E. Clark

I think it was a couple of days -- they would act as an agent, really, to try and get the portfolio into a position where they were comfortable to take it on as part of their own portfolio, and through that process, there would be closing options and also switching hedges.

So to your point, they would have been getting out of S&Ps into the appropriate single stocks, because we would now have sight of the underlying risks or the underlying equities that were part of the portfolio but also the option risks that they would have created, which would -- otherwise, it would have been very difficult. You cannot hedge those before you have them on the system.

Q. And there's an agreement between PMTG and the ex-Lehman desk that's in your seventh bullet, sir.

Can you tell me when this agreement was reached?

A. Not exactly, but in the couple of days before the -- before they started to do it.

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E. Clark

Q. Before they started --

A. So a couple of days prior to October the 2nd. Maybe a day.

Q. Sir, the last bullet of your summary reads: "The initial estimation of this cost was \$100 million. The final estimate from the ex-Lehman traders was close to \$200 million, and this difference drove the p&l change seen by the PMTG desk on these positions."

Do you see that?

A. I do, yes.

Q. Can you explain to me what you mean by that?

A. When they were reaching an agreement that there would be an agency basis for getting the options into appropriate -- excuse me -- the option portfolio into an appropriate state, the Lehman traders felt that they wanted to take it on that they had been hedged.

The ex-Lehman guys -- traders -- excuse me -- gave an estimate of what they thought that would -- what sort of cost they

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1 E. Clark  
2 would incur in the market, doing the various  
3 things they were going to do to get the hedges  
4 and close out some positions but offsetting  
5 hedges onto these single stock options.

6 And I heard in the discussion  
7 there was an estimate given of 100 million,  
8 and then once we got to the end of the  
9 process, that number turned out -- had come in  
10 at 200 million.

11 **Q. Do you have any understanding,**  
12 **sir, of the final cost of that exercise?**

13 A. Could you be more specific about  
14 which bit you're asking for?

15 **Q. Well, I'm afraid it's driven from**  
16 **your memo, so maybe I need to ask you to be**  
17 **more specific about your memorandum.**

18 **You say: "The initial estimation**  
19 **of this cost was \$100 million."**

20 **Do you see that?**

21 A. Yes.

22 **Q. What are you referring to when**  
23 **you talk about "this cost"?**

24 A. That's the cost of getting the  
25 portfolio into a position where they had

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1 E. Clark  
2 hedged as much of the risks using the  
3 appropriate single stock hedging options so  
4 that they were comfortable to take the  
5 portfolio on.

6 **Q. So the estimated cost for**  
7 **doing -- putting on the best possible**  
8 **hedges -- again, this is the portfolio of**  
9 **positions in 074M and F that Barclays acquired**  
10 **from Lehman -- was initially \$100 million? Is**  
11 **that correct?**

12 MR. SHAW: Objection to form.

13 A. Do you mind repeating? I'll read  
14 it.

15 (Reading.) I would say the 100  
16 million refers to the cost of getting the  
17 portfolio into position where they were  
18 comfortable to take it.

19 There would have been, to your  
20 point, some hedges executed. They would have  
21 been trading out of those positions as well,  
22 all of which is likely to generate costs. An  
23 estimate was made of 100 million, and it came  
24 in at 200 million.

25 **Q. From whom did you get these**

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1 **E. Clark**  
2 **initial and final costs, sir?**

3 A. The final costs would have come  
4 out from the accounting information that I was  
5 given by the product controllers who were  
6 looking after that system.

7 When you say the initial costs --

8 **Q. The initial estimate of \$100**  
9 **million.**

10 A. That was out of the discussions  
11 with Stephen King and the Lehman legacy  
12 traders.

13 **Q. Can you be more precise, sir,**  
14 **than the round figure of 200 million as to the**  
15 **final cost of fully hedging and making the**  
16 **ex-Lehman desk comfortable with the risk of**  
17 **managing these positions taken from OCC**  
18 **account 74M and F, as you've described?**

19 MR. SHAW: Objection to form.

20 A. No, I cannot.

21 **Q. Where would that information be**  
22 **contained, sir? Would it be contained in a**  
23 **document?**

24 MR. SHAW: Objection to form.

25 Foundation.

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1 E. Clark  
2 A. I think the -- it would be  
3 difficult to get to that number, because the  
4 positions were now booked into portfolios and  
5 mixed up with -- mixed up -- combined with  
6 other positions.

7 **Q. Where did you get your estimate,**  
8 **sir, of close to \$200 million?**

9 A. It would have been from the  
10 systems, so -- but within the number that I  
11 would have used to get to that 200 was --  
12 would also have included other factors. So  
13 it's hard to strip it out.

14 **Q. What other factors would it have**  
15 **included, sir?**

16 A. Market movements.

17 **Q. Any other factors apart from**  
18 **market movements?**

19 A. I can't think of anything that  
20 would be significant.

21 **Q. Okay. Moving down the page, sir,**  
22 **there's a series of -- there's, it looks like,**  
23 **a table that is headed: "P&L calculation for**  
24 **the period PMTG owned the options."**

25 **Do you see that?**

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E. Clark

A. I see.

**Q. Is that period September 22nd to October 7, 2008?**

A. Yes.

**Q. And taking each of the entries in turn, can you describe for me what they represent to you, sir?**

A. The options number is the P&L movement on the single stock option portfolio that we had.

The Hedges (options and futures at Barcap) are the listed options and futures put on that we discussed earlier to Barclays' infrastructure.

Hedges (futures at Lehman) were similarly hedging transactions done, but they were separate, because they were done on the Lehman infrastructure.

Stock (assignments and hedges) is the P&L impact on the stock trades that were done as part of managing the portfolio risks and also assignments where options had, during the period, expired. And they expired in the money for whether we or the account's party

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E. Clark

owned them or we or the exchange owned them, depending upon where the option was, and that meant we would have had to purchase or to sell stock, depending on which way around the option was.

And then "Payment by PMTG for likely cost of closing positions" is what we discussed.

**Q. Looking at the first hedges line there, sir, that has the entry -- a positive entry of 349 million, is it fair to characterize that as the profit from hedges that were placed sometime prior to October 7th through the date of October 7th?**

A. Yes. Yes, it is.

**Q. And is that same description also accurate for the \$80 million figure below that?**

A. Yes, it is. They were prior to October the 7th up to October the 7th.

**Q. And are you able to give me any further description of the hedges that were put on at Lehman? Were those single stock hedges or S&P hedges?**

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MR. SHAW: Objection.

Mischaracterizes prior testimony.

A. From the comment, it says, "Futures at Lehman," so I would read that as S&P futures. But I am speculating somewhat.

**Q. And the \$349 million profit on hedges, sir, was -- is that the profit from the hedges that were put on by the ex-Lehman desk on an agency basis?**

A. No.

**Q. What is it, sir?**

A. It's the profit on the indexing future and options done by the Barclays traders.

**Q. Described in bullet point 3?**

A. Yes.

**Q. Is there any profit or loss prior to October 7th of the hedges that are described in the second to last bullet point under your summary, sir?**

A. I'm afraid I don't understand your question.

**Q. What I'm trying to do is link the narrative in your summary of events to the**

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**figures in your calculation at the bottom of the page. That's not a question. I'm just trying to explain what I'm -- where my questions are drawn from.**

A. Thank you.

**Q. And you told me that the 349 relates to the S&P index futures and options hedges that Barcap placed that were described in bullet point 3.**

**The hedges that result in an \$80-million profit immediately below the 349 figure, is there a narrative description that describes those hedges in your summary?**

A. The second to last point refers to them executing hedges, stock and option, and with -- it doesn't mention the futures within that, but I would -- I would treat it as characterizing all the hedging activity that they were doing around the portfolio, which included some futures.

**Q. Right. I think we now understand each other.**

**So is it true, to the best of your knowledge, sir, that the hedging**

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1 **E. Clark**  
2 **reflected in bullet point 3 results in the**  
3 **\$349 million profit, which is the second line**  
4 **of your calculation?**

5 A. That's right, yes.

6 **Q. And the profit that results from**  
7 **the hedging described in your second to last**  
8 **bullet point is the 80 million, which is the**  
9 **third line?**

10 A. That's not right.

11 Within a number of these lines,  
12 you would see the activities that the P&L  
13 impact -- excuse me -- of the activities I  
14 mention, so I list sort of stock option.

15 As we've said, I could have put  
16 futures in there as well, and they would have  
17 been in a number of these categories. Perhaps  
18 I can give an example of what they might be  
19 doing.

20 In options, they might be -- in  
21 the options figure of 6620, that could include  
22 them executing listed options transactions,  
23 which you would count as hedges or to close  
24 the portfolio, given the complexity of it.

25 Now, you would see that as

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1 **E. Clark**  
2 hedging, as described in the penultimate  
3 point, but I wouldn't -- it's not in another  
4 line. It's in the 6620 line with the market  
5 movements and other things driving the option  
6 valuation.

7 **Q. When you say "the 6620 line,"**  
8 **sir --**

9 A. 662. Excuse me.

10 So your question, it's not in  
11 there, because it's spread both in there and  
12 in other lines.

13 **Q. I understand. Thank you.**

14 **Turning the page on Exhibit 647,**  
15 **sir, you have a section on "Valuation and**  
16 **Price Testing."**

17 **Do you see that?**

18 A. I do, yes.

19 **Q. Just so we're clear, we're**  
20 **talking about the same options that came from**  
21 **074M and F. Correct?**

22 A. We are, yes.

23 **Q. The second paragraph reads: "The**  
24 **valuation team has price tested the valuation**  
25 **of the positions at acquisition and checked**

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1 **E. Clark**  
2 **the overall valuation of the same portfolio at**  
3 **the transfer date."**

4 **Do you see that?**

5 A. I do, yes.

6 **Q. Do you know when the valuation**  
7 **team actually valued the positions?**

8 A. I'm sorry. I can't recall.

9 **Q. Do you know if they did it at**  
10 **acquisition or sometime between the**  
11 **acquisition and the date of your memorandum?**

12 A. I know that they did it between  
13 acquisition and the date of the memorandum.

14 **Q. But you can't be more specific**  
15 **than that?**

16 A. They would have done it quite  
17 close to acquisition, so far closer than it  
18 was to the date of the memorandum.

19 But they can't have done it at  
20 acquisition. The timing doesn't work.

21 **Q. Who's responsible for the**  
22 **valuation team, sir?**

23 A. At the time, there was a chap  
24 called Jerry Shi.

25 **Q. Is he no longer employed by**

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1 **E. Clark**  
2 **Barclays?**

3 A. He is no longer employed by  
4 Barclays.

5 **Q. Do you know where he's employed**  
6 **today?**

7 A. I don't, actually. No. I'm  
8 sorry.

9 **Q. Your memo goes on to say: "The**  
10 **valuation team's price testing data is**  
11 **independent and ultimately from OPRA at 4 p.m.**  
12 **snap time."**

13 **Do you see that?**

14 A. I do, yes.

15 **Q. What's OPRA?**

16 A. I cannot recall exactly what OPRA  
17 stands for. It is a pricing service that can  
18 give you listed options prices.

19 **Q. Do you know what snap time is,**  
20 **sir?**

21 A. Snap time is a term meaning when  
22 you mark positions. So you could see it,  
23 though it may not be exactly the same time as  
24 your end of trading days show, which those  
25 prices can then be used to work out what you

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2 made or lost during the day.

3 **Q. Do you know the acquisition date**  
4 **that's used in this valuation, sir? Is it the**  
5 **22nd of September?**

6 A. I think it may be the 19th. I'm  
7 not sure.

8 **Q. Who would I ask if I wanted to**  
9 **know the answer to that question?**

10 MR. SHAW: Objection.  
11 Foundation.

12 You can answer if you know.

13 A. You can ask me, but I'd need to  
14 go and check.

15 **Q. Who would you check with?**

16 A. Check with Charles Utley, who  
17 runs that team now.

18 I may be able to access the  
19 records myself also, but...

20 **Q. To your knowledge, sir, did the**  
21 **valuation team use Lehman's prices to value**  
22 **the positions at acquisition?**

23 A. They would not have done that,  
24 because they would have used an independent  
25 source of prices. Those prices couldn't be

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1 E. Clark

2 the same as the Lehman prices such that they  
3 would -- could be marked at the same level.  
4 But that is not what you would do in price  
5 testing.

6 **Q. Okay. That's all I have for this**  
7 **document.**

8 MR. OXFORD: It may be a good  
9 time to take a break.

10 (Recess taken from 2:08 p.m. to  
11 2:17 p.m.)

12 BY MR. OXFORD:

13 **Q. Could you have Exhibit 648 in**  
14 **front of you, please.**

15 A. Yes.

16 **Q. And that sir, is your declaration**  
17 **that you signed on January 8, 2010. Correct?**

18 A. It is, yes.

19 **Q. Can you turn in the first**  
20 **instance to paragraph 9, please.**

21 A. (Complying.)

22 **Q. You have it there, sir?**

23 A. I do.

24 **Q. It says, "From the closing**  
25 **through October 7, 2008, when the LBI options**

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1 E. Clark

2 (and the long and short securities positions  
3 associated with the exercise or assignment of  
4 the options pending or settled in the options  
5 accounts as of the closing) lost substantial  
6 value."

7 **Do you see that?**

8 A. Yes.

9 **Q. It goes on to say, "Attached as**  
10 **Exhibit 1 is a statement of the profits and**  
11 **losses, as provided by the product controllers**  
12 **of the trading books, arising from the**  
13 **activity of the Barclays' equity options**  
14 **traders in managing the portfolio prior to the**  
15 **transfer of the positions on October 7."**

16 **Do you see that?**

17 A. Yes.

18 **Q. And you conclude that, "The total**  
19 **losses in value in this regard amounted to 730**  
20 **million."**

21 **Correct?**

22 A. Yes.

23 **Q. And you refer them to Exhibit 1?**

24 A. Yes.

25 **Q. Could you turn to Exhibit 1,**

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2 please, sir.

3 A. (Complying.)

4 **Q. Do you have it there, sir?**

5 A. Yes.

6 **Q. It's titled, "Profit/Loss on 074M**  
7 **and 074F Options Position From Acquisition**  
8 **Through Trading."**

9 **Do you see that?**

10 A. Yes.

11 **Q. Could you explain to me, in turn,**  
12 **what each of the three boxes represent,**  
13 **please?**

14 A. The first box is the P&L on the  
15 options we've been discussing and any related  
16 stocks. By "related" I mean ones that were  
17 taken through assignment from acquisition to  
18 the 1st of October.

19 The second box is from the 2nd of  
20 October through to -- it says the 6th. And  
21 then -- both for options and stocks. And then  
22 the last one would be the sum of those two.

23 **Q. Exhibit 1 doesn't take account of**  
24 **any of the hedging activity that's described**  
25 **in Exhibit 647. Is that correct?**

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E. Clark

A. That's right, yes.

Q. Can you tell me why that is, please, sir?

A. The Exhibit 1 was done as an exhibit for the declaration, which was about the listed options.

So the activity on hedging was not related to the kind of statements I was making around listed options.

Q. In what sense is it not related, sir?

A. I would -- the declaration is talking about the listed options portfolio and the exhibit has the P&L for those listed options portfolio. So that's what I mean by it's not related.

Q. But if you look at Exhibit 647, sir, your October 16th memo, at the bottom of the first page you describe the P&L calculation for the period PMTG owned the options. Correct?

A. That's right, yes.

Q. And you include in that P&L calculation the positive effect of the hedges

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Barclays placed. Correct?

A. Oh, yes.

Q. So why do you include it in your memo of October 16, 2008, but not in your discussion of the P&L in your declaration paragraph 9?

A. I think you've asked me that already, and I think I answered, but the declaration is about the listed options position. And so it's to support the listed options positions numbers.

Q. If you were to add in the net effect of the hedges that were placed that are described in your October 16, 2008, memorandum, it's accurate that the total losses you describe in paragraph 9 would be reduced. Is that correct?

A. Yes.

Q. Can you tell me how much they would be reduced by?

A. 349.

Q. Would they also be reduced by the hedges that you've characterized as futures at Lehman, sir?

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A. They would. I did not mention that number because it offsets with the payment that was made by PMTG. So to include all of it, that's where I got my 349. But you are right.

Q. So I'm correct that the 80 million in profit on the hedges that you describe as futures at Lehman should also be deducted from that 730 million in paragraph 9 of your declaration, sir?

MR. SHAW: Objection.

Mischaracterizes prior testimony.

A. I agree with his objection of your phrasing of the question. How can I comment on "should" if you were to characterize what you're trying to achieve by doing it.

Q. I think you're both giving me excellent objections. So let me try it another way.

Do you agree, sir, that the losses in total value that you describe as \$730 million in paragraph 9 of your declaration were offset by the 349 million in

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hedges that you reference in 647?

A. Yes.

Q. Do you agree that those losses were also offset by profit on hedges of 80 million that you describe as futures on hedges at Lehman?

A. Yes.

Q. Your P&L calculation, sir, on Exhibit 647, do you have that in front of you, sir?

A. Yes, I do.

Q. It doesn't include a credit for any margin posted at the OCC. Is that correct?

A. That's correct. Yes.

Q. Can you tell me why that is?

A. That's not part of this memo.

Q. Is there a reason that it's not part of this memo?

A. I was not seeking to talk about the margin when I wrote this memo nor do I have any knowledge really around the margin.

Q. Can you have in front of you what I marked as Exhibit 649, please, sir. And

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1 E. Clark  
2 **Q. Okay. Could you turn to**  
3 **paragraph 11, please.**  
4 **MR. SHAW:** So we're clear on the  
5 record about what he's being designated  
6 to testify about, he's being designated  
7 to testify only about whether Barclays  
8 hedged the options and futures positions  
9 and whether and to the extent to which  
10 any reported losses, e.g., the alleged  
11 loss of \$730 million reflected on  
12 Exhibit 534-A topic 25 have been offset  
13 by hedging the assets.  
14 And specifically when I say  
15 "hedging the assets," I'm referring only  
16 to the -- when I say "assets," I'm  
17 referring only to the options and the  
18 futures positions.  
19 **Q. Okay. Does Mr. Shaw's**  
20 **representation reflect your understanding,**  
21 **Mr. Clark, as to what you were designated to**  
22 **be a witness on?**  
23 A. Yes.  
24 **Q. Have we exhausted your**  
25 **recollection on the topics on which you were**  
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1 **E. Clark**  
2 **designated?**  
3 **Let me put it another way.**  
4 **Do you have any information about**  
5 **the topics for which you've been designated**  
6 **that we have not discussed today?**  
7 A. That's quite a wide question.  
8 Not relevant -- not relevant information --  
9 excuse me.  
10 You have the memo, which is where  
11 I drew together my understanding of what  
12 happened. So I suppose I could say I followed  
13 the process of trying to pull together what I  
14 understood and that's the results of it.  
15 So there's nothing that I judged  
16 at the time to be relevant that I didn't put  
17 in there. So I would say not relevant  
18 information.  
19 **Q. When you say "relevant," relevant**  
20 **to what? Your memorandum at Exhibit 647?**  
21 A. That memorandum was my  
22 understanding of what -- my notes of what  
23 happened at the time. So there's nothing else  
24 that I would put in.  
25 And I think that answers your  
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1 E. Clark  
2 question. But your phrasing made me just be a  
3 bit careful because nonrelevant, I guess I  
4 would designate it out. But it's all in the  
5 memo.  
6 **MR. OXFORD:** Okay. I don't think  
7 I have any further questions for you at  
8 this time, Mr. Clark. I believe counsel  
9 for the committee has a couple of  
10 questions.  
11 **MR. DAKIS:** Just a couple of  
12 questions.  
13 **EXAMINATION BY**  
14 **MR. DAKIS:**  
15 **Q. I'm Robert Dakis from Quinn**  
16 **Emanuel Urquhart Oliver & Hedges. We**  
17 **represent the official committee of unsecured**  
18 **creditors of Lehman Brothers Holdings.**  
19 **My questions revolve mostly**  
20 **around Exhibit 647. And I just want to make**  
21 **sure that my understanding of the exhibit is**  
22 **clear.**  
23 **It's correct that you created**  
24 **Exhibit 647 in October of 2008?**  
25 A. Yes.  
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1 E. Clark  
2 **Q. In October of 2008, did you share**  
3 **Exhibit 647 with any of your colleagues?**  
4 A. I did, yes.  
5 **Q. Who did you share this with?**  
6 A. Francis Pearn, Lilly McInerney,  
7 Jerry Shi. I don't recall others.  
8 There may have been others. But they would  
9 have been the people who I'm likely to need to  
10 send it to.  
11 **Q. In October of 2008, did you**  
12 **create any other summaries of any other**  
13 **portions of the Lehman Brothers acquisition?**  
14 A. I did not, no.  
15 **Q. In October of 2008, did Francis**  
16 **Pearn ever share with you any summaries of the**  
17 **Lehman transaction she created?**  
18 **MR. SHAW:** He.  
19 A. He.  
20 **Q. He. I'm sorry.**  
21 A. I don't recall that he did.  
22 **Q. In October of 2008 did Lilly**  
23 **McInerney ever share any summaries of the**  
24 **Lehman transaction with you?**  
25 A. I don't recall that she did.  
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